

Exhibit 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No. 10 Civ. 9308 (JSR)

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BURTON T. FRIED,
Plaintiff,

- against -

LVI SERVICES, INC., LVI PARENT CORP., CODE
HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE
EQUITY V LP; APOLLO INVESTMENT CORP.,
SCOTT E. STATE, in his official and
individual capacities; BRIAN SIMMONS, in
his official and individual capacities;
RAJAY BAGARIA, in his official and
individual capacities; GERALD J. GIRARDI,
in his official and individual capacities,
Defendants.

-----x

May 23, 2011
11:06 a.m.

<p>2</p> <p>1 2 3 4 VIDEOTAPE DEPOSITION of RAJAY 5 BAGARIA, taken by the Plaintiff, pursuant 6 to Notice, held at the offices of Thompson 7 Wigdor & Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>4</p> <p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>3</p> <p>1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 MATTHEW GORMAN, ESQ. 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p>5</p> <p>1 2 THE VIDEOGRAPHER: We are on 11:06:13 3 the record. My name is JD Martinez of 11:06:13 4 Veritext New York. The date today is May 11:06:17 5 23, 2011. The time on the video monitor 11:06:20 6 is 11:06 a.m. This deposition being held 11:06:24 7 in the office of Thompson Wigdor & Gilly 11:06:27 8 LLP, located at 85, Fifth Avenue, New 11:06:31 9 York, New York. The caption of this case 11:06:34 10 is Burton T. Fried versus LVI Services, 11:06:36 11 Inc., et al., filed in the United States 11:06:41 12 District Court, Southern District of New 11:06:43 13 York. The name of the witness is Rajay 11:06:46 14 Bagaria. 11:06:48 15 At this time the attorneys will 11:06:50 16 identify themselves and the parties they 11:06:50 17 represent after which our court reporter, 11:06:53 18 Debbie, will swear in the witness, and we 11:06:55 19 can proceed. 11:06:57 20 MS. SELTZER: Joanne Seltzer 11:07:00 21 with Sidley Austin, LLP representing 11:07:02 22 defendants. 11:07:03 23 MR. DATOO: Shaffin Datto with 11:07:05 24 Thompson Wigdor & Gilly representing the 11:07:08 25 plaintiff Burt Fried. 11:07:08</p>

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14	16
<p>1 BAGARIA</p> <p>2 Q. What are your job duties at 11:13:33</p> <p>3 Apollo? 11:13:36</p> <p>4 A. My focus is on investment 11:13:36</p> <p>5 underwriting. 11:13:39</p> <p>6 Q. For any particular type of 11:13:40</p> <p>7 companies or investments? 11:13:44</p> <p>8 A. All types. 11:13:45</p> <p>9 Q. Okay. Now, are you familiar 11:13:46</p> <p>10 with a company called LVI Parent Corp.? 11:13:49</p> <p>11 A. Yes. 11:13:51</p> <p>12 Q. How so? 11:13:52</p> <p>13 A. It is the parent of LVI 11:13:53</p> <p>14 Services. 11:13:56</p> <p>15 Q. Okay. What does LVI Parent do? 11:13:56</p> <p>16 A. If it is -- if my 11:13:59</p> <p>17 understanding -- I am -- my 11:14:04</p> <p>18 understanding -- the corporate structure 11:14:07</p> <p>19 is -- I am not entirely clear as to what 11:14:08</p> <p>20 the holding company's different names are, 11:14:14</p> <p>21 but if Parent is directly above Services 11:14:17</p> <p>22 its sole purpose would be to own the 11:14:20</p> <p>23 equity of Services. 11:14:23</p> <p>24 Q. Okay. And who owns LVI Parent? 11:14:24</p> <p>25 A. If parent is the ultimate 11:14:27</p>	<p>1 BAGARIA</p> <p>2 A. In I believe it was October 11:15:26</p> <p>3 2010. 11:15:31</p> <p>4 Q. Is that when the transaction 11:15:31</p> <p>5 closed? 11:15:33</p> <p>6 A. Yes. We finalized our 11:15:33</p> <p>7 investment when the transaction closed. 11:15:36</p> <p>8 Q. Okay. And that was in October 11:15:37</p> <p>9 2010? 11:15:40</p> <p>10 A. I believe so. I can't recall 11:15:40</p> <p>11 the exact date. 11:15:42</p> <p>12 Q. Okay. And why did Apollo invest 11:15:43</p> <p>13 in LVI Parent? 11:15:46</p> <p>14 A. To obtain a recovery on our 11:15:47</p> <p>15 existing investment. 11:15:51</p> <p>16 Q. What do you mean by that? 11:15:51</p> <p>17 A. Apollo had an investment in LVI 11:15:55</p> <p>18 that it made in 2005. Due to the 11:15:59</p> <p>19 underperformance of the company, that 11:16:03</p> <p>20 investment no longer had value, so Apollo 11:16:06</p> <p>21 invested new money in order to obtain 11:16:09</p> <p>22 ownership, so that it might obtain a 11:16:12</p> <p>23 recovery at some point in the future. 11:16:15</p> <p>24 Q. Does LVI have a board of 11:16:17</p> <p>25 directors, LVI Parent have a board of 11:16:21</p>
15	17
<p>1 BAGARIA</p> <p>2 holding company, then it is owned by 11:14:31</p> <p>3 Apollo, Code Hennessy, Falcon, and 11:14:34</p> <p>4 potentially some others. 11:14:40</p> <p>5 Q. Is there a majority owner? 11:14:41</p> <p>6 A. Majority being defined as over 11:14:44</p> <p>7 50 percent? 11:14:46</p> <p>8 Q. Yes. 11:14:47</p> <p>9 A. No. 11:14:48</p> <p>10 Q. Is there any owner that owns 11:14:48</p> <p>11 more stock than others? 11:14:52</p> <p>12 A. Yes. 11:14:53</p> <p>13 Q. And which owner would that be? 11:14:53</p> <p>14 A. Apollo has slightly more shares 11:14:56</p> <p>15 than Code Hennessy. 11:14:58</p> <p>16 Q. Was that true in 2010? 11:15:00</p> <p>17 A. At the conclusion of the 11:15:03</p> <p>18 restructuring, yes. 11:15:06</p> <p>19 Q. Okay. And what percentage does 11:15:06</p> <p>20 Apollo own of LVI Parent? 11:15:11</p> <p>21 A. Approximately 34. 11:15:13</p> <p>22 Q. When did Apollo finalize its 11:15:15</p> <p>23 investment in LVI Parent? 11:15:20</p> <p>24 MS. SELTZER: I object to the 11:15:23</p> <p>25 form. You can answer. 11:15:25</p>	<p>1 BAGARIA</p> <p>2 directors? 11:16:23</p> <p>3 A. LVI has a board of directors. I 11:16:24</p> <p>4 can't recall the specific entity, 11:16:26</p> <p>5 whichever the board sits at. 11:16:28</p> <p>6 Q. So when you mean LVI, do you 11:16:33</p> <p>7 mean Parent, do you mean Services, do you 11:16:35</p> <p>8 mean another LVI entity? 11:16:37</p> <p>9 A. When I mean LVI I refer to the 11:16:39</p> <p>10 operating company of LVI that generates 11:16:41</p> <p>11 all the income. There is a holding 11:16:43</p> <p>12 company that has -- that is where the 11:16:45</p> <p>13 equity and the board sits, and I don't 11:16:47</p> <p>14 recall the specific name of that entity. 11:16:49</p> <p>15 Q. Do you sit on the board of LVI? 11:16:51</p> <p>16 A. I sit on the board of directors 11:16:55</p> <p>17 of the company, and again I am not clear 11:16:58</p> <p>18 as to whether that is LVI Holdings or 11:17:02</p> <p>19 Services or Parent, but at whatever entity 11:17:04</p> <p>20 the board of directors is comprised at 11:17:07</p> <p>21 that is where I have a board seat. 11:17:10</p> <p>22 Q. So you sit on the board of 11:17:11</p> <p>23 directors, but you don't know for what 11:17:13</p> <p>24 company you sit on? 11:17:14</p> <p>25 MS. SELTZER: Objection. 11:17:15</p>

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<p style="text-align: right;">22</p> <p>1 BAGARIA</p> <p>2 Q. You can answer. 11:21:01</p> <p>3 A. That is how our charter is 11:21:02</p> <p>4 established. 11:21:04</p> <p>5 Q. What is LVI Acquisition Corp.? 11:21:05</p> <p>6 A. It was an entity I believe 11:21:16</p> <p>7 formed to consummate the acquisition, and 11:21:19</p> <p>8 I am not clear whether that related to 11:21:26</p> <p>9 this transaction in 2010 or the 2005 11:21:28</p> <p>10 buyout. 11:21:34</p> <p>11 Q. Do you know the relationship 11:21:34</p> <p>12 between LVI Acquisition and LVI Parent? 11:21:36</p> <p>13 A. I don't. 11:21:39</p> <p>14 Q. Does LVI Parent have any 11:21:40</p> <p>15 employees? 11:21:44</p> <p>16 A. I do not believe so. 11:21:45</p> <p>17 Q. And does LVI Parent have any 11:21:51</p> <p>18 officers? 11:21:53</p> <p>19 A. I don't know the answer to that 11:21:54</p> <p>20 question. 11:21:57</p> <p>21 Q. Well, you said Jeffrey Smith is 11:21:57</p> <p>22 an officer of LVI Parent, correct? 11:21:59</p> <p>23 MS. SELTZER: Objection. 11:22:02</p> <p>24 A. I said that Jeffrey Smith is an 11:22:02</p> <p>25 officer of the board, and I was unclear as 11:22:04</p>	<p style="text-align: right;">24</p> <p>1 BAGARIA</p> <p>2 bank account? 11:22:59</p> <p>3 A. I don't know the answer. 11:22:59</p> <p>4 Q. Does LVI Parent have any 11:23:00</p> <p>5 offices? 11:23:02</p> <p>6 A. I don't know. 11:23:02</p> <p>7 Q. You don't know if it has an 11:23:08</p> <p>8 office? 11:23:10</p> <p>9 MS. SELTZER: Asked and 11:23:11</p> <p>10 answered. 11:23:12</p> <p>11 A. That is what I said. 11:23:12</p> <p>12 Q. Do you know where LVI Parent is 11:23:13</p> <p>13 headquartered? 11:23:17</p> <p>14 A. I don't know. 11:23:17</p> <p>15 Q. Does LVI Parent have any 11:23:18</p> <p>16 subsidiaries? 11:23:21</p> <p>17 A. I would think LVI Services at 11:23:22</p> <p>18 some point in the chain would be a sub. 11:23:32</p> <p>19 Q. Any other subs? 11:23:33</p> <p>20 A. Not -- I don't know the answer 11:23:34</p> <p>21 to that question. 11:23:36</p> <p>22 Q. Is LVI Services a wholly-owned 11:23:36</p> <p>23 subsidiary of LVI Parent? 11:23:39</p> <p>24 A. I don't know. 11:23:41</p> <p>25 Q. Do you know what the 11:23:42</p>
<p style="text-align: right;">23</p> <p>1 BAGARIA</p> <p>2 to what level the board he sat at. 11:22:07</p> <p>3 Q. What do you mean that Jeffrey 11:22:09</p> <p>4 Smith is an officer of the board? 11:22:12</p> <p>5 A. His title is secretary to my 11:22:14</p> <p>6 knowledge. 11:22:20</p> <p>7 Q. Is -- but he is not on the board 11:22:20</p> <p>8 of directors, correct? 11:22:24</p> <p>9 A. He is not a board member. 11:22:25</p> <p>10 Q. Okay. And is he an officer of 11:22:26</p> <p>11 LVI Parent? 11:22:29</p> <p>12 MS. SELTZER: Objection. Asked 11:22:31</p> <p>13 and answered. 11:22:33</p> <p>14 A. I don't know the answer to that 11:22:33</p> <p>15 question. 11:22:35</p> <p>16 Q. Okay. Does LVI Parent own any 11:22:35</p> <p>17 assets? 11:22:37</p> <p>18 A. I can't -- I don't know. 11:22:38</p> <p>19 Q. Does it own -- you said it is a 11:22:46</p> <p>20 holding company, correct? 11:22:48</p> <p>21 A. If it is a holding company that 11:22:49</p> <p>22 sits directly above Services, then it 11:22:51</p> <p>23 would own a hundred percent of the equity, 11:22:54</p> <p>24 as I mentioned. 11:22:56</p> <p>25 Q. Does LVI Parent have its own 11:22:56</p>	<p style="text-align: right;">25</p> <p>1 BAGARIA</p> <p>2 relationship is between LVI Acquisition 11:23:46</p> <p>3 and LVI Services? 11:23:49</p> <p>4 A. I don't know. 11:23:50</p> <p>5 Q. What does LVI Services do? 11:23:51</p> <p>6 A. It is engaged in the remediation 11:23:54</p> <p>7 of asbestos and mold and also in 11:24:01</p> <p>8 structural demolition. 11:24:06</p> <p>9 Q. And do you have any background 11:24:07</p> <p>10 in that area? 11:24:09</p> <p>11 MS. SELTZER: Objection to the 11:24:12</p> <p>12 form. 11:24:13</p> <p>13 A. Can you be more specific? 11:24:13</p> <p>14 Q. Do you know anything about the 11:24:15</p> <p>15 business that LVI Services engages in? 11:24:16</p> <p>16 A. I invested in the company. So 11:24:19</p> <p>17 from that standpoint, yes. 11:24:21</p> <p>18 Q. From a financial standpoint? 11:24:23</p> <p>19 A. Well, a financial investment 11:24:25</p> <p>20 which entails 34 percent ownership 11:24:28</p> <p>21 connotes some knowledge of the underlying 11:24:31</p> <p>22 business. 11:24:37</p> <p>23 Q. Okay. Have you ever worked in 11:24:37</p> <p>24 that business? 11:24:38</p> <p>25 A. As an employee of a services 11:24:39</p>

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<p style="text-align: right;">46</p> <p>1 BAGARIA</p> <p>2 document is forwarded to anyone outside of 11:44:38</p> <p>3 Apollo? 11:44:41</p> <p>4 A. Outside of our attorneys, not to 11:44:42</p> <p>5 my knowledge. 11:44:46</p> <p>6 Q. Okay. Now, did there come a 11:44:46</p> <p>7 time when Scott State was hired as 11:44:50</p> <p>8 president and CEO of LVI Services? 11:44:53</p> <p>9 A. Yes, he was hired as CEO. 11:44:55</p> <p>10 Q. And do you know when that was? 11:44:58</p> <p>11 A. I believe it was in October or 11:45:00</p> <p>12 around October. 11:45:04</p> <p>13 Q. Of what year? 11:45:05</p> <p>14 A. 2010. 11:45:06</p> <p>15 Q. And who made the decision to 11:45:08</p> <p>16 hire Mr. State? 11:45:11</p> <p>17 A. The board of directors. 11:45:11</p> <p>18 Q. And were you involved in the 11:45:18</p> <p>19 decision to hire him? 11:45:19</p> <p>20 A. I had no authority to make the 11:45:24</p> <p>21 decision. However, I was offered the 11:45:26</p> <p>22 opportunity to meet with Scott. 11:45:28</p> <p>23 Q. And did you take that 11:45:29</p> <p>24 opportunity? 11:45:31</p> <p>25 A. Yes. 11:45:31</p>	<p style="text-align: right;">48</p> <p>1 BAGARIA</p> <p>2 to my knowledge. 11:46:27</p> <p>3 Q. All right. Do you know what his 11:46:29</p> <p>4 job duties were as chairman? 11:46:32</p> <p>5 A. What they were? 11:46:33</p> <p>6 Q. Yes. 11:46:35</p> <p>7 A. I do not. 11:46:36</p> <p>8 Q. Did there come a time when you 11:46:37</p> <p>9 learned what his job duties were as 11:46:43</p> <p>10 chairman? 11:46:46</p> <p>11 A. I learned anecdotally from Burt 11:46:46</p> <p>12 about some of the things he claimed to 11:46:54</p> <p>13 have done with the previous CEO, but I 11:46:56</p> <p>14 have not come across any document produced 11:47:02</p> <p>15 by the board which outlined those 11:47:06</p> <p>16 responsibilities that Burt should hold as 11:47:08</p> <p>17 chairman. 11:47:12</p> <p>18 Q. When did you have this 11:47:12</p> <p>19 conversation -- was it a conversation with 11:47:14</p> <p>20 Mr. Fried that you had where he told you 11:47:16</p> <p>21 about his duties under Mr. McNamara? 11:47:19</p> <p>22 A. Yes. 11:47:21</p> <p>23 Q. And when was that conversation? 11:47:22</p> <p>24 A. They were in late October I 11:47:23</p> <p>25 believe. 11:47:26</p>
<p style="text-align: right;">47</p> <p>1 BAGARIA</p> <p>2 Q. And what did you think? 11:45:32</p> <p>3 MS. SELTZER: Objection to the 11:45:34</p> <p>4 form. 11:45:35</p> <p>5 A. I thought -- 11:45:35</p> <p>6 Q. What did you think of Mr. State? 11:45:37</p> <p>7 A. I thought he was a very well 11:45:39</p> <p>8 qualified candidate. 11:45:41</p> <p>9 Q. Okay. And did the board vote on 11:45:43</p> <p>10 hiring Mr. State? 11:45:47</p> <p>11 A. I was not part of that board. I 11:45:48</p> <p>12 had no knowledge of it. 11:45:50</p> <p>13 Q. Do you know when Mr. State's 11:45:51</p> <p>14 first day of work was? 11:45:53</p> <p>15 MS. SELTZER: Objection. 11:45:55</p> <p>16 A. I can't recall. 11:45:56</p> <p>17 Q. Now, after Mr. State was hired, 11:45:57</p> <p>18 did Mr. Fried's job title change? 11:45:59</p> <p>19 A. I believe Burt gave up the 11:46:02</p> <p>20 interim CEO title and kept his title as 11:46:09</p> <p>21 chairman. 11:46:12</p> <p>22 Q. Okay. And what were his job 11:46:13</p> <p>23 duties as chairman? 11:46:15</p> <p>24 A. There was no specific document 11:46:19</p> <p>25 that outlined his job duties as chairman 11:46:25</p>	<p style="text-align: right;">49</p> <p>1 BAGARIA</p> <p>2 Q. And how many conversations were 11:47:27</p> <p>3 there? 11:47:31</p> <p>4 A. At least one, maybe two. 11:47:31</p> <p>5 Q. Do you recall what you said in 11:47:37</p> <p>6 the first conversation? 11:47:40</p> <p>7 A. Well, this was in the context of 11:47:41</p> <p>8 what his role as chairman should be going 11:47:46</p> <p>9 forward, which obviously was a matter of 11:47:48</p> <p>10 debate, and I do recall expressing my 11:47:54</p> <p>11 point of view on what his role should be 11:47:59</p> <p>12 under the new ownership. 11:48:02</p> <p>13 Q. And what was your point of view? 11:48:04</p> <p>14 A. That he would have a more 11:48:05</p> <p>15 diminished role as chairman if what he 11:48:09</p> <p>16 claimed to have done under Bob McNamara's 11:48:12</p> <p>17 leadership as chairman was in fact true. 11:48:16</p> <p>18 Q. Why? 11:48:19</p> <p>19 MS. SELTZER: Objection. 11:48:20</p> <p>20 A. Because the new CEO did not need 11:48:21</p> <p>21 Burt to act in that capacity. 11:48:26</p> <p>22 Q. Is that because Burt was 70 11:48:28</p> <p>23 years old? 11:48:34</p> <p>24 MS. SELTZER: Objection. 11:48:35</p> <p>25 A. No, it was not. 11:48:35</p>

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<p style="text-align: right;">50</p> <p>1 BAGARIA</p> <p>2 Q. Now, while Mr. Fried was 11:48:37</p> <p>3 chairman under Scott State, do you have 11:48:40</p> <p>4 any reason to believe that his work 11:48:45</p> <p>5 performance was less than excellent? 11:48:47</p> <p>6 MS. SELTZER: I object to the 11:48:50</p> <p>7 form. 11:48:52</p> <p>8 A. His work performance in what 11:48:52</p> <p>9 capacity? 11:48:54</p> <p>10 Q. Whatever the job duties he was 11:48:55</p> <p>11 performing at LVI under Scott State. 11:48:58</p> <p>12 A. Under his employment agreement? 11:49:01</p> <p>13 Q. No, the job duties he was 11:49:02</p> <p>14 performing while Scott State was CEO. 11:49:04</p> <p>15 A. But are you referring to his job 11:49:06</p> <p>16 duties as the chairman or as an employee? 11:49:08</p> <p>17 Q. His job -- well, 11:49:10</p> <p>18 chairman -- what do you mean by -- when 11:49:16</p> <p>19 you say his job duties as chairman? 11:49:17</p> <p>20 A. Burt had a consulting 11:49:19</p> <p>21 arrangement in which he was receiving 11:49:21</p> <p>22 compensation. 11:49:23</p> <p>23 Q. When did he enter into this 11:49:24</p> <p>24 arrangement? 11:49:28</p> <p>25 A. I don't know. 11:49:29</p>	<p style="text-align: right;">52</p> <p>1 BAGARIA</p> <p>2 his ability to lead in a -- in a capacity 11:50:41</p> <p>3 that had significant responsibility. 11:50:49</p> <p>4 Q. At that time, Scott State was 11:50:51</p> <p>5 the new CEO, correct? 11:50:54</p> <p>6 A. He had joined I believe in 11:50:55</p> <p>7 October, yes. 11:50:58</p> <p>8 Q. And the job duties that Mr. 11:50:58</p> <p>9 Fried was performing either as an employee 11:51:02</p> <p>10 or as a consultant of LVI services, was he 11:51:04</p> <p>11 performing those duties in a satisfactory 11:51:08</p> <p>12 manner? 11:51:11</p> <p>13 MS. SELTZER: Objection. Can 11:51:12</p> <p>14 you -- which period? After Mr. State came 11:51:13</p> <p>15 on as -- 11:51:16</p> <p>16 MR. DATOO: Yes. 11:51:17</p> <p>17 A. So the period between Mr. State 11:51:18</p> <p>18 joining and Burt resigning is a very 11:51:20</p> <p>19 narrow period of time, and I can't really 11:51:27</p> <p>20 comment on his performance within that 11:51:31</p> <p>21 small window. 11:51:34</p> <p>22 Q. Now, prior to hiring Mr. State, 11:51:35</p> <p>23 did you ever think about firing Mr. Fried? 11:51:41</p> <p>24 A. I was unaware that Burt had a 11:51:44</p> <p>25 consulting or employment arrangement with 11:51:54</p>
<p style="text-align: right;">51</p> <p>1 BAGARIA</p> <p>2 Q. So when Scott State was CEO, was 11:49:29</p> <p>3 Burt under this consulting arrangement? 11:49:34</p> <p>4 A. I believe Burt was still 11:49:37</p> <p>5 on -- on the payroll. 11:49:39</p> <p>6 Q. As an employee or as a 11:49:42</p> <p>7 consultant? 11:49:44</p> <p>8 A. I am not sure which one. 11:49:45</p> <p>9 Q. Was Mr. Fried ever an employee 11:49:47</p> <p>10 of LVI Services under Scott State? 11:49:56</p> <p>11 A. I can't recall whether he was an 11:49:59</p> <p>12 employee or a consultant, but he was 11:50:04</p> <p>13 receiving some remuneration from the 11:50:07</p> <p>14 company. 11:50:11</p> <p>15 Q. In whatever capacity Mr. Fried 11:50:11</p> <p>16 was in, do you have any reason to believe 11:50:19</p> <p>17 that his job performance was less than 11:50:22</p> <p>18 excellent? 11:50:24</p> <p>19 MS. SELTZER: Objection to 11:50:25</p> <p>20 form. 11:50:26</p> <p>21 A. Yes, I do. 11:50:26</p> <p>22 Q. Why? 11:50:28</p> <p>23 A. As I stated previously, the 11:50:29</p> <p>24 business materially underperformed his 11:50:33</p> <p>25 expectations, and as a result I questioned 11:50:36</p>	<p style="text-align: right;">53</p> <p>1 BAGARIA</p> <p>2 the company and was receiving the amount 11:51:56</p> <p>3 of compensation that he was getting. When 11:51:58</p> <p>4 that came to my attention, it was very 11:52:01</p> <p>5 clear to me that that needed to either 11:52:04</p> <p>6 discontinue or be set at a level that was 11:52:08</p> <p>7 materially lower than what we had been 11:52:11</p> <p>8 paying Burt. 11:52:14</p> <p>9 As it relates to his role as 11:52:16</p> <p>10 chairman, we fully envisioned him 11:52:19</p> <p>11 maintaining a role on the board of 11:52:21</p> <p>12 directors but in a capacity that the board 11:52:23</p> <p>13 agreed and the CEO could work with. 11:52:28</p> <p>14 Q. Okay. My question was prior to 11:52:34</p> <p>15 Mr. State's hire did you ever think about 11:52:36</p> <p>16 firing Mr. Fried? 11:52:39</p> <p>17 A. Prior to Mr. State joining the 11:52:40</p> <p>18 company, we felt no need to terminate Burt 11:52:45</p> <p>19 Fried in his capacity as interim CEO 11:52:50</p> <p>20 because the restructuring was coming close 11:52:52</p> <p>21 to a resolution, and we would -- at that 11:52:55</p> <p>22 point in time we would find a permanent 11:52:58</p> <p>23 CEO. 11:53:00</p> <p>24 Q. Now, you said we twice. Who do 11:53:01</p> <p>25 you mean by "we"? 11:53:04</p>

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<p style="text-align: right;">54</p> <p>1 BAGARIA</p> <p>2 A. When I said we, I meant the 11:53:05</p> <p>3 board. 11:53:06</p> <p>4 Q. Everyone on the board? 11:53:07</p> <p>5 A. I don't know if all members of 11:53:08</p> <p>6 the board shared this view. 11:53:10</p> <p>7 Q. Who shared that view? 11:53:11</p> <p>8 A. Certainly Jerry Girardi from 11:53:13</p> <p>9 Apollo. 11:53:15</p> <p>10 Q. Is that the only person that 11:53:16</p> <p>11 shared the view? 11:53:17</p> <p>12 MS. SELTZER: Objection. To 11:53:19</p> <p>13 your knowledge. 11:53:20</p> <p>14 Q. That view. 11:53:21</p> <p>15 A. To my knowledge. 11:53:21</p> <p>16 Q. Now, after Mr. State was hired, 11:53:22</p> <p>17 did there come a time when Mr. State began 11:53:27</p> <p>18 taking away Mr. Fried's job duties and 11:53:29</p> <p>19 giving them to other employees? 11:53:32</p> <p>20 MS. SELTZER: Objection to the 11:53:33</p> <p>21 form. 11:53:34</p> <p>22 A. I don't have direct knowledge of 11:53:35</p> <p>23 it. 11:53:39</p> <p>24 Q. Do you have indirect knowledge 11:53:40</p> <p>25 of it? 11:53:45</p>	<p style="text-align: right;">56</p> <p>1 BAGARIA</p> <p>2 form. 11:54:56</p> <p>3 A. I can't recall. 11:54:56</p> <p>4 Q. And what did you hear from Mr. 11:54:57</p> <p>5 State? 11:54:59</p> <p>6 A. Mr. State had a vision for how 11:54:59</p> <p>7 to fix the business and grow it, and that 11:55:05</p> <p>8 entailed making certain changes and he 11:55:09</p> <p>9 needed more autonomy to execute his plan 11:55:13</p> <p>10 and less involvement from Burt in order to 11:55:21</p> <p>11 do that, and Apollo was supportive of that 11:55:23</p> <p>12 decision. 11:55:26</p> <p>13 Q. Now, did you attend a meeting on 11:55:26</p> <p>14 October 19 between Mr. State and Mr. 11:55:29</p> <p>15 Fried? 11:55:31</p> <p>16 A. I can't recall. 11:55:32</p> <p>17 Q. Okay. Do you know if they met 11:55:34</p> <p>18 on or about that day? 11:55:36</p> <p>19 A. I don't know. 11:55:38</p> <p>20 Q. Did you hear if Mr. State made 11:55:39</p> <p>21 any comments about Mr. Fried's age? 11:55:47</p> <p>22 MS. SELTZER: I object to the 11:55:52</p> <p>23 form. 11:55:53</p> <p>24 Q. At a meeting? 11:55:53</p> <p>25 A. Can you repeat the question? 11:55:54</p>
<p style="text-align: right;">55</p> <p>1 BAGARIA</p> <p>2 A. I heard from Burt about things 11:53:46</p> <p>3 Scott was doing to take away 11:53:53</p> <p>4 responsibilities, and I heard from Scott, 11:53:55</p> <p>5 you know, a different side of the story. 11:54:00</p> <p>6 Q. And what did you hear from Mr. 11:54:03</p> <p>7 Fried? 11:54:05</p> <p>8 A. That Scott was taking actions to 11:54:05</p> <p>9 marginalize Burt within the organization. 11:54:11</p> <p>10 Q. And did he list any specific 11:54:14</p> <p>11 examples? 11:54:16</p> <p>12 A. I can't recall the details. 11:54:17</p> <p>13 Q. And what did you say in 11:54:20</p> <p>14 response? 11:54:21</p> <p>15 A. I told Burt that he needed to 11:54:21</p> <p>16 defer to Scott and Scott's decisions on 11:54:30</p> <p>17 what role Burt would have in the ongoing 11:54:35</p> <p>18 operations of the business. 11:54:39</p> <p>19 Q. And what did Mr. Fried say in 11:54:40</p> <p>20 response to that? 11:54:42</p> <p>21 A. Mr. Fried wanted to discuss that 11:54:43</p> <p>22 more extensively. 11:54:46</p> <p>23 Q. So he didn't refuse to defer to 11:54:47</p> <p>24 Mr. State, did he? 11:54:52</p> <p>25 MS. SELTZER: I object to the 11:54:55</p>	<p style="text-align: right;">57</p> <p>1 BAGARIA</p> <p>2 Q. Sure. 11:55:55</p> <p>3 Do you know if Mr. State or did 11:55:56</p> <p>4 you -- 11:55:58</p> <p>5 MR. DATOO: Sorry. Strike that. 11:55:58</p> <p>6 Q. Did you hear if Mr. State made 11:56:00</p> <p>7 any comments about Mr. Fried's age at a 11:56:02</p> <p>8 meeting the two of them were at? 11:56:04</p> <p>9 MS. SELTZER: Same objection. 11:56:07</p> <p>10 A. I know that Burt and Scott had a 11:56:12</p> <p>11 meeting where the relationship and Burt's 11:56:14</p> <p>12 involvement in the business was discussed 11:56:18</p> <p>13 and that there was a comment made around 11:56:20</p> <p>14 Burt's age. I heard that from both Scott 11:56:24</p> <p>15 and Burt prior to the Burt -- the board 11:56:28</p> <p>16 meeting in November 4 where we discussed 11:56:33</p> <p>17 the issue more broadly. 11:56:36</p> <p>18 Q. And what was the comment that 11:56:38</p> <p>19 was made about Mr. Fried's age? 11:56:41</p> <p>20 A. The comment was along the lines 11:56:44</p> <p>21 of Burt you're 70 or 71 years old. How 11:56:47</p> <p>22 long do you plan to continue doing this? 11:56:53</p> <p>23 Q. Do you know if Mr. State made 11:56:55</p> <p>24 any comments about planning for the future 11:57:01</p> <p>25 at that meeting? 11:57:04</p>

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<p style="text-align: right;">90</p> <p>1 BAGARIA</p> <p>2 Q. Now, after -- who argued first 12:44:04</p> <p>3 in this board meeting, Mr. Fried or Mr. 12:44:09</p> <p>4 State? 12:44:13</p> <p>5 A. I believe Scott State spoke 12:44:14</p> <p>6 first. 12:44:21</p> <p>7 Q. Okay. And then did he speak or 12:44:22</p> <p>8 did he argue? 12:44:25</p> <p>9 MS. SELTZER: Objection. 12:44:26</p> <p>10 A. Again, I don't know the 12:44:27</p> <p>11 difference. If you want to explain it, 12:44:28</p> <p>12 I'll be happy to address it. 12:44:30</p> <p>13 Q. I am just trying to use -- I am 12:44:31</p> <p>14 just trying to use -- to understand your 12:44:34</p> <p>15 meaning of the words. 12:44:38</p> <p>16 A. Okay. 12:44:38</p> <p>17 Q. And did Mr. Fried state I guess 12:44:39</p> <p>18 anything second after Mr. State? 12:44:42</p> <p>19 MR. DATOO: That was a horrible 12:44:45</p> <p>20 question. Strike that. 12:44:46</p> <p>21 Q. Did Mr. Fried then present his 12:44:47</p> <p>22 point of view after Mr. State? 12:44:49</p> <p>23 A. Yes. 12:44:51</p> <p>24 Q. And then while Mr. Fried was 12:44:51</p> <p>25 presenting his point of view, did he 12:44:53</p>	<p style="text-align: right;">92</p> <p>1 BAGARIA</p> <p>2 A. Burt claimed that he had 12:46:24</p> <p>3 substantial influence over the 12:46:26</p> <p>4 relationship and the decision for Arch to 12:46:27</p> <p>5 extend surety financing to the company, 12:46:31</p> <p>6 and that him announcing his uninvolvedness 12:46:39</p> <p>7 with LVI would disrupt and cause 12:46:42</p> <p>8 significant harm to the company. 12:46:44</p> <p>9 Q. Now, did Mr. Fried -- 12:46:46</p> <p>10 MR. DATOO: Strike that. 12:46:52</p> <p>11 Q. After Mr. Fried presented his 12:46:53</p> <p>12 point of view, what happened next? 12:46:56</p> <p>13 A. We asked Burt and Scott to step 12:46:58</p> <p>14 outside, and the board had a discussion 12:47:03</p> <p>15 around what had transpired. 12:47:05</p> <p>16 Q. And how long was that 12:47:07</p> <p>17 discussion? 12:47:08</p> <p>18 A. I can't recall exactly but 12:47:08</p> <p>19 approximately fifteen minutes. 12:47:12</p> <p>20 Q. And what was discussed outside 12:47:14</p> <p>21 the presence of Mr. Fried and Mr. State? 12:47:17</p> <p>22 A. We discussed how to resolve the 12:47:21</p> <p>23 situation. 12:47:25</p> <p>24 Q. And what resolution was reached? 12:47:26</p> <p>25 Was a resolution reached? 12:47:33</p>
<p style="text-align: right;">91</p> <p>1 BAGARIA</p> <p>2 mention that Mr. State made a comment 12:44:58</p> <p>3 about his age? 12:45:05</p> <p>4 A. Yes. 12:45:05</p> <p>5 Q. And did you notice any reaction 12:45:06</p> <p>6 by the other board members? 12:45:08</p> <p>7 A. The reaction to 12:45:14</p> <p>8 Scott's -- Burt's speech was more of 12:45:20</p> <p>9 surprise because I believe that most felt 12:45:22</p> <p>10 that the statement was taken out of 12:45:27</p> <p>11 context, and some of the threats that 12:45:29</p> <p>12 followed by Burt was -- was entirely new 12:45:33</p> <p>13 to all of us, and -- and that is why we 12:45:38</p> <p>14 had a surprise reaction. 12:45:43</p> <p>15 Q. What threats did Mr. Fried make? 12:45:45</p> <p>16 A. Burt threatened to take up an 12:45:48</p> <p>17 age based discrimination case. He also 12:45:54</p> <p>18 threatened to disrupt our relationship 12:45:57</p> <p>19 with the company's sureties, which is a 12:45:59</p> <p>20 lifeline to the business, so actions that 12:46:03</p> <p>21 would potentially cause real harm to the 12:46:06</p> <p>22 company outside of his issues with the 12:46:09</p> <p>23 comment that Scott had made. 12:46:13</p> <p>24 Q. And how did he threaten to break 12:46:15</p> <p>25 up the relationship with the sureties? 12:46:21</p>	<p style="text-align: right;">93</p> <p>1 BAGARIA</p> <p>2 A. A course of action was 12:47:36</p> <p>3 determined, and that was to have John 12:47:38</p> <p>4 Schnabel from Falcon engage Burt in 12:47:41</p> <p>5 discussions around an arrangement that 12:47:45</p> <p>6 could work for all sides. 12:47:50</p> <p>7 Q. Was a vote taken at this board 12:47:52</p> <p>8 meeting as to Mr. Fried's employment? 12:47:56</p> <p>9 A. Not that I can recall. 12:47:58</p> <p>10 Q. And what did -- what did you say 12:48:00</p> <p>11 at this meeting, this meeting just among 12:48:05</p> <p>12 the board members? 12:48:08</p> <p>13 A. To be clear, we had not made a 12:48:09</p> <p>14 decision at that board meeting to 12:48:11</p> <p>15 terminate Burt. We simply wanted to find 12:48:13</p> <p>16 an arrangement that could work for all 12:48:20</p> <p>17 sides. We wanted to find an opportunity 12:48:22</p> <p>18 for Burt to stay involved with the company 12:48:24</p> <p>19 as chairman. What I specifically said was 12:48:26</p> <p>20 my views surrounding Burt's list and the 12:48:30</p> <p>21 autonomy that I felt we should provide a 12:48:34</p> <p>22 new CEO to the company, which I've stated 12:48:37</p> <p>23 previously, but I will be happy to say it 12:48:40</p> <p>24 again. 12:48:42</p> <p>25 Q. And what did Mr. Girardi say at 12:48:42</p>

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<p style="text-align: right;">94</p> <p>1 BAGARIA</p> <p>2 this meeting? 12:48:45</p> <p>3 A. I can't recall exactly what he 12:48:45</p> <p>4 said. 12:48:48</p> <p>5 Q. What did Mr. Schnabel say at 12:48:48</p> <p>6 this meeting? 12:48:51</p> <p>7 A. I can't recall exactly what John 12:48:51</p> <p>8 said. 12:48:54</p> <p>9 Q. What did Mr. Simmons say at this 12:48:54</p> <p>10 meeting? 12:48:56</p> <p>11 A. Again, I can't recall exactly 12:48:56</p> <p>12 what you said. 12:48:58</p> <p>13 Q. What did Mr. Buck say at this 12:48:59</p> <p>14 meeting? 12:49:02</p> <p>15 A. No recollection. 12:49:02</p> <p>16 Q. How about Mr. Fiorucci? 12:49:04</p> <p>17 A. The same. 12:49:06</p> <p>18 Q. Was there ever a vote taken to 12:49:07</p> <p>19 terminate Mr. Fried? 12:49:16</p> <p>20 MS. SELTZER: I object to the 12:49:18</p> <p>21 form. 12:49:19</p> <p>22 A. We -- there was consensus 12:49:20</p> <p>23 amongst the board. Everyone had an 12:49:23</p> <p>24 opportunity to voice their concern, but 12:49:27</p> <p>25 everyone was in agreement to my 12:49:31</p>	<p style="text-align: right;">96</p> <p>1 BAGARIA</p> <p>2 meeting? 12:50:14</p> <p>3 A. I can't recall. 12:50:16</p> <p>4 Q. And how did the board come to 12:50:21</p> <p>5 this consensus? 12:50:23</p> <p>6 A. The board had -- was involved 12:50:24</p> <p>7 with the decision making around resolving 12:50:29</p> <p>8 the tensions between Burt and Scott. We 12:50:33</p> <p>9 attempted to find a resolution, which was 12:50:36</p> <p>10 a path all board members were supportive 12:50:40</p> <p>11 of, and when we determined we couldn't it 12:50:42</p> <p>12 was clear and conversations were held as 12:50:47</p> <p>13 to what -- what needed to happen around 12:50:51</p> <p>14 Burt's employment, but the decision for, 12:50:55</p> <p>15 you know, termination related more towards 12:51:00</p> <p>16 Burt -- Burt's consulting or employment 12:51:03</p> <p>17 arrangement. The decision for his 12:51:05</p> <p>18 chairmanship was not something that the 12:51:09</p> <p>19 board terminated. That was done by Burt. 12:51:11</p> <p>20 Q. But as an employee or as a 12:51:15</p> <p>21 contractor -- 12:51:19</p> <p>22 A. Yes. 12:51:20</p> <p>23 Q. -- he was terminated from LVI 12:51:20</p> <p>24 Services, correct? 12:51:23</p> <p>25 A. Yes. 12:51:24</p>
<p style="text-align: right;">95</p> <p>1 BAGARIA</p> <p>2 understanding. 12:49:33</p> <p>3 Q. During that meeting? 12:49:34</p> <p>4 A. No. Again, we did not make a 12:49:35</p> <p>5 decision to terminate Burt at that 12:49:37</p> <p>6 meeting. 12:49:39</p> <p>7 Q. All right. When did the 12:49:41</p> <p>8 board -- did the board come to a consensus 12:49:43</p> <p>9 to terminate Mr. Fried at that meeting if 12:49:45</p> <p>10 Mr. Schnabel's conversation with Mr. Fried 12:49:49</p> <p>11 didn't go well? 12:49:52</p> <p>12 MS. SELTZER: Objection. Asked 12:49:53</p> <p>13 and answered. 12:49:54</p> <p>14 A. Again, we did not make a 12:49:55</p> <p>15 decision to terminate. 12:49:57</p> <p>16 Q. Did there come a time when the 12:49:59</p> <p>17 board made a decision to terminate? 12:50:00</p> <p>18 A. Yes. 12:50:02</p> <p>19 Q. When? 12:50:03</p> <p>20 A. When we determined that we could 12:50:03</p> <p>21 not reach a suitable arrangement with 12:50:07</p> <p>22 Burt. 12:50:09</p> <p>23 Q. What was the date? 12:50:10</p> <p>24 A. I don't recall. 12:50:11</p> <p>25 Q. And did the board hold a 12:50:12</p>	<p style="text-align: right;">97</p> <p>1 BAGARIA</p> <p>2 Q. And was the vote -- was there a 12:51:25</p> <p>3 vote taken to terminate Mr. Fried? 12:51:28</p> <p>4 A. I can't recall if there was a 12:51:31</p> <p>5 specific vote whether that decision was 12:51:35</p> <p>6 unanimous or majority, but there were a 12:51:37</p> <p>7 large number of board members who were 12:51:41</p> <p>8 supportive and voiced their support over 12:51:44</p> <p>9 taking that course of action, so it was 12:51:47</p> <p>10 a -- it was a company approved 12:51:51</p> <p>11 termination. 12:51:54</p> <p>12 Q. Was -- how did the board come to 12:51:55</p> <p>13 this consensus? Was it through 12:52:01</p> <p>14 conversations, through e-mail exchanges? 12:52:03</p> <p>15 A. Yes, all of the above. 12:52:05</p> <p>16 Q. And you testified that you don't 12:52:10</p> <p>17 know if it was a unanimous vote? 12:52:12</p> <p>18 A. I can't recall whether our 12:52:15</p> <p>19 charter stipulates that that would need 12:52:17</p> <p>20 unanimous approval or majority, but I do 12:52:19</p> <p>21 know that it was in compliance with our 12:52:23</p> <p>22 corporate organization documents. 12:52:26</p> <p>23 Q. But there was no meeting held? 12:52:29</p> <p>24 MS. SELTZER: Objection. Asked 12:52:33</p> <p>25 and answered. 12:52:34</p>

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<p style="text-align: right;">118</p> <p>1 BAGARIA</p> <p>2 in front you marked Plaintiff's 11, 01:14:27</p> <p>3 Exhibit 11. 01:14:30</p> <p>4 Please take a look at it and let 01:14:31</p> <p>5 me know if you have ever seen it before. 01:14:33</p> <p>6 A. I don't recall looking at this. 01:14:39</p> <p>7 (Plaintiff's Exhibit 12 marked 01:15:12</p> <p>8 for identification.) 01:15:15</p> <p>9 (Document handed to witness.) 01:15:16</p> <p>10 Q. Mr. Bagaria, you have in front 01:15:17</p> <p>11 of a document marked Plaintiff's Exhibit 01:15:18</p> <p>12 12. 01:15:21</p> <p>13 Could you take a look at that 01:15:21</p> <p>14 document and let me know if you have ever 01:15:22</p> <p>15 seen it before? 01:15:24</p> <p>16 A. I can't recall reviewing this. 01:15:27</p> <p>17 Q. Okay. Now, you mentioned 01:15:29</p> <p>18 earlier that Mr. Fried resigned; is that 01:15:33</p> <p>19 correct? 01:15:39</p> <p>20 A. I believe Burt resigned as 01:15:39</p> <p>21 chairman of the board. Correct. 01:15:44</p> <p>22 Q. But he was terminated -- 01:15:47</p> <p>23 A. As an employee. 01:15:50</p> <p>24 Q. Of LVI Services? 01:15:51</p> <p>25 A. Again, I don't recall which 01:15:52</p>	<p style="text-align: right;">120</p> <p>1 BAGARIA</p> <p>2 compensation. 01:17:01</p> <p>3 Q. Okay. And do you recall what 01:17:05</p> <p>4 the level of compensation was? 01:17:06</p> <p>5 A. I don't recall the specifics. 01:17:07</p> <p>6 Q. Do you recall if any 01:17:09</p> <p>7 compensation was guaranteed to Mr. Fried? 01:17:10</p> <p>8 MS. SELTZER: I object to the 01:17:13</p> <p>9 form. 01:17:14</p> <p>10 A. I recall there was two 01:17:15</p> <p>11 components. One was a set salary for 01:17:17</p> <p>12 maintaining the board seat, and then to 01:17:21</p> <p>13 the extent he worked hours there would be 01:17:25</p> <p>14 some -- some bill rate established. 01:17:28</p> <p>15 Q. And what kind of functions did 01:17:30</p> <p>16 you envision Mr. Fried performing as a 01:17:36</p> <p>17 consultant? 01:17:38</p> <p>18 A. Really in whatever capacity the 01:17:39</p> <p>19 CEO needed it. 01:17:44</p> <p>20 Q. So if Mr. State didn't need him 01:17:46</p> <p>21 in any capacity he would be performing no 01:17:49</p> <p>22 functions? 01:17:51</p> <p>23 MS. SELTZER: Objection. 01:17:52</p> <p>24 A. As a consultant, correct. 01:17:53</p> <p>25 Q. And do you recall if Mr. Fried 01:17:55</p>
<p style="text-align: right;">119</p> <p>1 BAGARIA</p> <p>2 entity he was employed by. 01:15:54</p> <p>3 Q. Okay. Now, after the decision 01:15:55</p> <p>4 to terminate Mr. Fried was made, did LVI 01:16:00</p> <p>5 Services offer to retain him as a 01:16:04</p> <p>6 consultant? 01:16:06</p> <p>7 A. We had discussions around 01:16:07</p> <p>8 creating a consulting opportunity for Burt 01:16:16</p> <p>9 as an attempt to create a workable 01:16:19</p> <p>10 solution, which I understand Burt 01:16:24</p> <p>11 rejected. 01:16:28</p> <p>12 Q. Okay. And did you ever see -- 01:16:28</p> <p>13 do you know if that offer to retain Mr. 01:16:30</p> <p>14 Fried as a consultant was reduced to 01:16:36</p> <p>15 writing? 01:16:38</p> <p>16 A. I can see that it has been. 01:16:38</p> <p>17 Q. Okay. Did you know before I 01:16:40</p> <p>18 showed you the document? 01:16:41</p> <p>19 A. I -- I recall being told that it 01:16:42</p> <p>20 had been offered to him. 01:16:45</p> <p>21 Q. And do you recall what the terms 01:16:48</p> <p>22 were? 01:16:50</p> <p>23 A. I don't recall the specifics, 01:16:51</p> <p>24 although I did have conversations with 01:16:55</p> <p>25 Code Hennessy on the level of 01:16:59</p>	<p style="text-align: right;">121</p> <p>1 BAGARIA</p> <p>2 had to waive his right to sue for age 01:17:58</p> <p>3 discrimination if he became a consultant? 01:18:02</p> <p>4 A. I don't know the details around 01:18:04</p> <p>5 that. 01:18:07</p> <p>6 Q. Do you know anything about that? 01:18:07</p> <p>7 A. No. 01:18:08</p> <p>8 Q. Do you know who drafted the 01:18:09</p> <p>9 consulting agreement? 01:18:20</p> <p>10 A. I don't. 01:18:21</p> <p>11 Q. Do you know who came up with the 01:18:25</p> <p>12 idea of having Mr. Fried work as a 01:18:27</p> <p>13 consultant? 01:18:29</p> <p>14 MS. SELTZER: Objection. 01:18:29</p> <p>15 A. I can't recall. 01:18:31</p> <p>16 Q. Do you know who would have 01:18:31</p> <p>17 reviewed the consulting agreement before 01:18:32</p> <p>18 it was presented to Mr. Fried? 01:18:34</p> <p>19 A. Most likely Sidley. 01:18:36</p> <p>20 Q. Okay. Now, does LVI Services 01:18:37</p> <p>21 currently have a satellite office in 01:18:48</p> <p>22 Westport, Connecticut? 01:18:50</p> <p>23 A. I believe that office has been 01:18:52</p> <p>24 closed. 01:18:54</p> <p>25 Q. Now, did Mr. Fried work out of 01:18:54</p>

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<p style="text-align: right;">122</p> <p>1 BAGARIA</p> <p>2 that office? 01:19:01</p> <p>3 A. I believe so. 01:19:01</p> <p>4 Q. Do you know how often? 01:19:05</p> <p>5 A. I don't. 01:19:06</p> <p>6 Q. Did Mr. Fried ever work out of 01:19:08</p> <p>7 the New York office? 01:19:10</p> <p>8 A. I don't remember. 01:19:11</p> <p>9 Q. Do you know what types of 01:19:12</p> <p>10 projects Mr. Fried was working on while he 01:19:16</p> <p>11 was chairman? 01:19:17</p> <p>12 A. I don't. 01:19:18</p> <p>13 Q. Are you familiar with Sheri 01:19:20</p> <p>14 Dembin? 01:19:27</p> <p>15 A. No. 01:19:27</p> <p>16 Q. You don't know who that is? 01:19:28</p> <p>17 A. I don't. 01:19:29</p> <p>18 Q. Are you familiar with Mr. 01:19:31</p> <p>19 Fried's daughter? 01:19:32</p> <p>20 A. I know he has -- he had a 01:19:33</p> <p>21 daughter that worked for the company. 01:19:35</p> <p>22 Q. Do you know what her name is? 01:19:37</p> <p>23 A. I can't recall. It might have 01:19:38</p> <p>24 been Sheri. 01:19:40</p> <p>25 Q. Okay. And do you know what 01:19:41</p>	<p style="text-align: right;">124</p> <p>1 BAGARIA</p> <p>2 A. My communication -- 01:20:29</p> <p>3 MS. SELTZER: Objection. If 01:20:31</p> <p>4 his understanding comes through any 01:20:32</p> <p>5 conversations with counsel, he is not to 01:20:34</p> <p>6 testify about that. 01:20:36</p> <p>7 Q. Other than any conversations you 01:20:38</p> <p>8 may or may not have had with counsel -- 01:20:39</p> <p>9 A. Yes. My conversations were with 01:20:42</p> <p>10 Scott State. 01:20:46</p> <p>11 Q. And what did he tell you? 01:20:47</p> <p>12 A. That he was closing the Westport 01:20:48</p> <p>13 office. 01:20:50</p> <p>14 Q. And did he tell you that Mr. 01:20:51</p> <p>15 Fried's daughter was being terminated? 01:20:52</p> <p>16 A. Yes. 01:20:54</p> <p>17 Q. And who made the decision to 01:20:55</p> <p>18 terminate -- I mean close the office? 01:20:57</p> <p>19 A. This was Scott's decision. 01:20:59</p> <p>20 Q. Did the board have to approve 01:21:00</p> <p>21 it? 01:21:02</p> <p>22 A. I don't believe so. 01:21:03</p> <p>23 Q. Did you vote to close the 01:21:04</p> <p>24 office? 01:21:07</p> <p>25 A. I don't recall. 01:21:07</p>
<p style="text-align: right;">123</p> <p>1 BAGARIA</p> <p>2 office she worked in? 01:19:43</p> <p>3 A. Yes, the Westport office. 01:19:44</p> <p>4 Q. Okay. And do you know what her 01:19:46</p> <p>5 job title was? 01:19:48</p> <p>6 A. I don't. 01:19:49</p> <p>7 Q. Do you know what her job duties 01:19:50</p> <p>8 were? 01:19:51</p> <p>9 A. No. 01:19:52</p> <p>10 Q. Do you know how long she was 01:19:53</p> <p>11 employed by LVI Services? 01:19:56</p> <p>12 A. I don't. 01:19:57</p> <p>13 Q. Do you know who she reported to? 01:19:59</p> <p>14 A. I don't. 01:20:00</p> <p>15 Q. Do you have any personal 01:20:10</p> <p>16 knowledge about the quality of her work 01:20:11</p> <p>17 performance? 01:20:13</p> <p>18 A. No. 01:20:14</p> <p>19 Q. Do you know if Mr. Fried's 01:20:14</p> <p>20 daughter was terminated from LVI Services? 01:20:18</p> <p>21 A. My understanding is she was 01:20:21</p> <p>22 terminated along with all of the other 01:20:24</p> <p>23 employees in that office. 01:20:26</p> <p>24 Q. And what is your understanding 01:20:27</p> <p>25 based upon? 01:20:28</p>	<p style="text-align: right;">125</p> <p>1 BAGARIA</p> <p>2 Q. And do you recall when the 01:21:08</p> <p>3 decision to close the office was made? 01:21:11</p> <p>4 A. I can't recall the specific 01:21:13</p> <p>5 date. 01:21:15</p> <p>6 Q. And was everyone from that 01:21:16</p> <p>7 office terminated? 01:21:17</p> <p>8 A. My understanding was a 01:21:19</p> <p>9 substantial portion of these -- the staff 01:21:23</p> <p>10 was terminated. I can't -- I don't know 01:21:28</p> <p>11 exactly whether every single employee was 01:21:32</p> <p>12 included. 01:21:36</p> <p>13 Q. And do you recall when the 01:21:36</p> <p>14 selection of employees that were being 01:21:37</p> <p>15 terminated was made? 01:21:42</p> <p>16 A. No. 01:21:43</p> <p>17 Q. Do you know when the Westport 01:21:49</p> <p>18 office closed? 01:21:58</p> <p>19 A. I don't know the exact date. 01:21:59</p> <p>20 Q. Do you know an approximate date? 01:22:01</p> <p>21 A. Earlier this year. 01:22:04</p> <p>22 Q. Now, do you know if Mr. Fried's 01:22:06</p> <p>23 daughter was offered the opportunity to 01:22:12</p> <p>24 work in the Milford office? 01:22:13</p> <p>25 A. I don't know. 01:22:16</p>

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1 BAGARIA

2 A. Not to my knowledge. 01:40:37

3 Q. Do you know who is paying your 01:40:38

4 attorney's fees? 01:40:40

5 A. Well, to be clear, we have had 01:40:41

6 two sets of attorneys, and so Apollo may 01:40:45

7 have been responsible for some of the 01:40:49

8 fees. I am not -- I am not clear on the 01:40:50

9 details. 01:40:52

10 Q. Are you paying any fees 01:40:53

11 personally? 01:40:54

12 A. No, I am not. 01:40:55

13 Q. Do you know if any of your 01:40:56

14 attorneys have been paid on an hourly 01:40:58

15 basis? 01:41:00

16 A. I don't know the details. 01:41:01

17 (Continued on next page.) 01:41:01

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1 BAGARIA

2 MR. DATOO: Okay. I have no 01:41:03

3 further questions for the witness. 01:41:04

4 MS. SELTZER: Thank you. 01:41:06

5 THE VIDEOGRAPHER: We're going 01:41:07

6 off the record. 1:41 p.m., end of today's 01:41:08

7 questioning. 01:41:12

8 (Time noted: 1:41 p.m.) 01:41:13

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15 RAJAY BAGARIA

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17 Subscribed and sworn to before me

18 this day of , 2011

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137

1 BAGARIA

2 CERTIFICATION

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4

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6 I, DEBBIE ZAROMATIDIS, a Shorthand

7 Reporter and a Notary Public, do hereby

8 certify that the foregoing witness, RAJAY

9 BAGARIA, was duly sworn on the date

10 indicated, and that the foregoing is a

11 true and accurate transcription of my

12 stenographic notes.

13 I further certify that I am not

14 employed by nor related to any party to

15 this action.

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23 DEBBIE ZAROMATIDIS

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1 BAGARIA

2 EXHIBITS

3

4 PLAINTIFF'S

EXHIBIT	DESCRIPTION	PAGE
1	Memo	43
2	List of responsibilities	59
3	E-mail	66
4	E-mail	71
5	E-mail	77
6	E-mail	99
7	E-mail	101
8	Letter	104
9	Handwritten notes	107
10	E-mail	112
11	Document	117
12	Document	118

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Exhibit 4

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No. 10 Civ. 9308 (JSR)

-----x

BURTON T. FRIED,
Plaintiff,

- against -

LVI SERVICES, INC., LVI PARENT CORP., CODE
HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE
EQUITY V LP; APOLLO INVESTMENT CORP.,
SCOTT E. STATE, in his official and
individual capacities; BRIAN SIMMONS, in
his official and individual capacities;
RAJAY BAGARIA, in his official and
individual capacities; GERALD J. GIRARDI,
in his official and individual capacities,
Defendants.

-----x

June 1, 2011
9:38 a.m.

<p>2</p> <p>1 2 3 4 VIDEOTAPE DEPOSITION of PAUL 5 CUTRONE, taken by the Plaintiff, pursuant 6 to Notice, held at the offices of Thompson 7 Wigdor & Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>4</p> <p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>3</p> <p>1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p>5</p> <p>1 2 THE VIDEOGRAPHER: My name is 09:37:53 3 J.D. Martinez of Veritext New York. The 09:37:54 4 date today is June 1, 2011. The time is 09:37:57 5 approximately 9:38 a.m. This deposition 09:38:01 6 is being held in the offices of Thompson 09:38:03 7 Wigdor & Gilly, LLP, located at 85 Fifth 09:38:05 8 Avenue, New York, New York. The caption 09:38:11 9 of the case is Burton T. Fried versus LVI 09:38:13 10 Services, Inc. et al. filed in the United 09:38:16 11 States District Court, Southern District 09:38:20 12 of New York. The name of the witness is 09:38:21 13 Paul Cutrone. 09:38:23 14 At the time -- at this time the 09:38:25 15 attorneys will identify themselves and the 09:38:27 16 parties they represent, after which our 09:38:29 17 court reporter Debbie Zaromatidis, will 09:38:31 18 swear in the witness, and we can proceed. 09:38:33 19 MS. SELTZER: Joanne Seltzer, 09:38:35 20 Sidley Austin, LLP representing all 09:38:37 21 defendants. 09:38:39 22 MR. DATOO: Shaffin Datto, 09:38:40 23 Thompson Wigdor & gilly representing the 09:38:43 24 plaintiff, Burton Fried. 25</p>

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<p>6</p> <p>1</p> <p>2 PAUL CUTRONE,</p> <p>3 having first been duly sworn by a Notary</p> <p>4 Public of the State of New York, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION BY MR. DATOO: 09:38:53</p> <p>7 Q. Good morning, Mr. Cutrone. 09:38:53</p> <p>8 A. Good morning. As you know, my 09:38:55</p> <p>9 name is Shaffin Dato, and I represent Mr. 09:38:56</p> <p>10 Fried in this matter. I am going to ask 09:39:00</p> <p>11 you some questions today. I hope you can 09:39:01</p> <p>12 answer all of them unless you are directed 09:39:08</p> <p>13 not to answer by your attorney. 09:39:08</p> <p>14 I am just going to start off 09:39:08</p> <p>15 with some preliminary questions. Is your 09:39:09</p> <p>16 ability to tell the truth in any way 09:39:11</p> <p>17 impaired today? 09:39:12</p> <p>18 A. No. 09:39:13</p> <p>19 Q. Do you understand that the 09:39:14</p> <p>20 answers you are about to give are under 09:39:16</p> <p>21 oath, and that you are subject to 09:39:17</p> <p>22 penalties of perjury if you give an 09:39:20</p> <p>23 untruthful answer? 09:39:23</p> <p>24 A. Yes. 09:39:24</p> <p>25 Q. I am going to assume that if you 09:39:24</p>	<p>8</p> <p>1 CUTRONE</p> <p>2 MS. SELTZER: I am saying just 09:40:09</p> <p>3 turn, so they could get a good shot of 09:40:10</p> <p>4 you. 09:40:13</p> <p>5 THE WITNESS: This is my good 09:40:13</p> <p>6 side. 09:40:15</p> <p>7 MS. SELTZER: I know. I know 09:40:15</p> <p>8 Shaffin is very attractive, but you have 09:40:16</p> <p>9 to -- go ahead. 09:40:18</p> <p>10 Q. Mr. Cutrone, in connection with 09:40:19</p> <p>11 this lawsuit, did you provide your 09:40:21</p> <p>12 attorney with all responsive documents? 09:40:23</p> <p>13 A. Yes. 09:40:24</p> <p>14 Q. Where did you look to find any 09:40:25</p> <p>15 documents? 09:40:27</p> <p>16 A. Whatever documents I would have 09:40:29</p> <p>17 been asked for, I would have had in my 09:40:31</p> <p>18 office. 09:40:33</p> <p>19 Q. Does that include on your 09:40:33</p> <p>20 computer? 09:40:36</p> <p>21 A. Yes. 09:40:37</p> <p>22 Q. Do you have a personal e-mail 09:40:37</p> <p>23 account? 09:40:39</p> <p>24 A. At work? 09:40:40</p> <p>25 Q. Just a personal e-mail account. 09:40:42</p>
<p>7</p> <p>1 CUTRONE</p> <p>2 answer a question that you understood it. 09:39:26</p> <p>3 If you don't understand a question, let me 09:39:27</p> <p>4 know, and I will ask it a different way. 09:39:29</p> <p>5 Please give verbal answers to my 09:39:31</p> <p>6 questions. Don't nod your head or shake 09:39:34</p> <p>7 it; otherwise, the court reporter won't be 09:39:36</p> <p>8 able to take it down. 09:39:39</p> <p>9 A. Uh-huh. 09:39:40</p> <p>10 Q. And please don't answer my 09:39:40</p> <p>11 question before I am finished asking it; 09:39:43</p> <p>12 otherwise, the court reporter won't be 09:39:46</p> <p>13 able to take both of us talking at the 09:39:48</p> <p>14 same time. 09:39:50</p> <p>15 If you need a break, just let me 09:39:51</p> <p>16 know. The only condition I have is that 09:39:53</p> <p>17 you answer the last question asked. 09:39:55</p> <p>18 Do you understand? 09:39:59</p> <p>19 A. Yes. 09:40:00</p> <p>20 MS. SELTZER: Could I add one 09:40:01</p> <p>21 thing? 09:40:02</p> <p>22 MR. DATOO: Sure. 09:40:04</p> <p>23 MS. SELTZER: Paul, play to the 09:40:05</p> <p>24 camera. 09:40:06</p> <p>25 THE WITNESS: Okay. 09:40:08</p>	<p>9</p> <p>1 CUTRONE</p> <p>2 A. Yes. 09:40:45</p> <p>3 Q. Did you check your personal 09:40:45</p> <p>4 e-mail account for any responsive 09:40:48</p> <p>5 documents? 09:40:49</p> <p>6 A. I did not. 09:40:50</p> <p>7 Q. Okay. Would there be any work- 09:40:50</p> <p>8 related documents stored in your personal 09:40:52</p> <p>9 e-mail? 09:40:54</p> <p>10 A. No. 09:40:55</p> <p>11 Q. Okay. Do you keep any work- 09:40:55</p> <p>12 related documents at home? 09:40:57</p> <p>13 A. No. 09:40:59</p> <p>14 Q. Okay. Have you ever been sued 09:41:01</p> <p>15 before? 09:41:05</p> <p>16 A. Me personally? 09:41:05</p> <p>17 Q. Yes. 09:41:08</p> <p>18 A. No. 09:41:08</p> <p>19 Q. Have you ever -- has anyone ever 09:41:09</p> <p>20 accused you of discrimination? 09:41:12</p> <p>21 A. No. 09:41:14</p> <p>22 Q. Have you ever given any sworn 09:41:15</p> <p>23 testimony before? 09:41:16</p> <p>24 A. Yes. 09:41:17</p> <p>25 Q. How many times? 09:41:19</p>

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14	16
<p>1 CUTRONE</p> <p>2 A. Yes. 09:44:48</p> <p>3 Q. Who? 09:44:48</p> <p>4 A. The president and CEO, Scott 09:44:49</p> <p>5 State. 09:44:51</p> <p>6 Q. And is he president and CEO of 09:44:51</p> <p>7 LVI Services, Inc.? 09:44:54</p> <p>8 A. Yes. 09:44:56</p> <p>9 Q. Okay. Since you've been 09:44:56</p> <p>10 employed by LVI Services, have you 09:45:10</p> <p>11 received any anti-discrimination training? 09:45:12</p> <p>12 A. No. 09:45:14</p> <p>13 Q. Have you -- do you know if LVI 09:45:18</p> <p>14 Services, Inc. has a handbook? 09:45:24</p> <p>15 A. Yes. 09:45:25</p> <p>16 Q. And do you know if that handbook 09:45:26</p> <p>17 contains an equal employment opportunity 09:45:30</p> <p>18 policy? 09:45:32</p> <p>19 A. I haven't looked at that in a 09:45:33</p> <p>20 while. So offhand I don't know, but I 09:45:35</p> <p>21 believe it does. 09:45:38</p> <p>22 Q. Okay. Do you know if it 09:45:39</p> <p>23 contains an anti-discrimination policy? 09:45:41</p> <p>24 A. It may. 09:45:43</p> <p>25 Q. And do you know if it contains 09:45:44</p>	<p>1 CUTRONE</p> <p>2 but if we -- whatever policies we have 09:46:33</p> <p>3 relative to things you mentioned would be 09:46:36</p> <p>4 in one or both of those documents if they 09:46:38</p> <p>5 are. 09:46:41</p> <p>6 Q. And was Mr. Fried employed by 09:46:41</p> <p>7 LVI Services, Inc.? 09:46:43</p> <p>8 A. Yes. 09:46:44</p> <p>9 Q. Do you know for how long? 09:46:46</p> <p>10 A. Offhand, no. I mean the entire 09:46:48</p> <p>11 time that I was -- when I was hired in 09:46:57</p> <p>12 February of '89 Mr. Fried I believe was 09:46:59</p> <p>13 employed by LVI Services, Inc. at the time 09:47:03</p> <p>14 although he might have been employed by 09:47:07</p> <p>15 the then former parent. So I really don't 09:47:07</p> <p>16 know, but he was with the company all 09:47:10</p> <p>17 those years that I was with the company 09:47:12</p> <p>18 when I was with the company. 09:47:19</p> <p>19 Q. Okay. Do you know what Mr. 09:47:20</p> <p>20 Fried's last job title was? 09:47:22</p> <p>21 MS. SELTZER: Objection. At 09:47:24</p> <p>22 the time of termination? 09:47:25</p> <p>23 MR. DATOO: Yes, his last job 09:47:27</p> <p>24 title. 09:47:29</p> <p>25 MS. SELTZER: Okay. 09:47:29</p>
15	17
<p>1 CUTRONE</p> <p>2 an anti-retaliation policy? 09:45:45</p> <p>3 A. I don't know. It may. 09:45:47</p> <p>4 Q. Do you know if any of these 09:45:49</p> <p>5 policies that I just mentioned exist 09:45:50</p> <p>6 outside the handbook? 09:45:52</p> <p>7 MS. SELTZER: I object to the 09:45:54</p> <p>8 form. 09:45:56</p> <p>9 Q. Let me rephrase it. 09:45:56</p> <p>10 Do you know if any of these 09:45:58</p> <p>11 policies that I just mentioned exist? 09:45:59</p> <p>12 MS. SELTZER: Same objection. 09:46:06</p> <p>13 Are you talking about -- 09:46:08</p> <p>14 MR. DATOO: Apart from the 09:46:10</p> <p>15 handbook. 09:46:11</p> <p>16 MS. SELTZER: So like online 09:46:12</p> <p>17 or -- 09:46:13</p> <p>18 MR. DATOO: Yes. 09:46:14</p> <p>19 Q. Are there -- do you know if 09:46:14</p> <p>20 these policies -- does LVI Services, Inc. 09:46:16</p> <p>21 have these policies? 09:46:18</p> <p>22 A. I'll say this: We have a code 09:46:20</p> <p>23 of ethics policy, and we have an employee 09:46:23</p> <p>24 handbook. I can't tell you chapter and 09:46:27</p> <p>25 verse what is in each of those documents, 09:46:31</p>	<p>1 CUTRONE</p> <p>2 A. I don't know. 09:47:30</p> <p>3 Q. Okay. And do you know who -- if 09:47:31</p> <p>4 he last worked for LVI Services, Inc.? 09:47:35</p> <p>5 A. I'll say that his pay check came 09:47:39</p> <p>6 from LVI Services, Inc. Yes. He was an 09:47:43</p> <p>7 employee of LVI Services, Inc. 09:47:46</p> <p>8 Q. Okay. And what is LVI Parent? 09:47:47</p> <p>9 A. LVI Parent Corp. is a holding 09:47:55</p> <p>10 company. 09:48:01</p> <p>11 Q. Does it engage in any business? 09:48:03</p> <p>12 A. No, not the business that -- no 09:48:05</p> <p>13 business at all actually. It is just a 09:48:10</p> <p>14 holding company. 09:48:12</p> <p>15 Q. And who owns LVI Parent? 09:48:13</p> <p>16 A. Currently? 09:48:15</p> <p>17 Q. Yes. 09:48:17</p> <p>18 A. LVI Parent is owned by -- there 09:48:18</p> <p>19 are several investors, several 09:48:24</p> <p>20 stockholders. You want me to name them? 09:48:26</p> <p>21 Q. Yes, if you can. 09:48:28</p> <p>22 A. And I -- I don't know if they 09:48:29</p> <p>23 have a specific name, you know. There 09:48:32</p> <p>24 might be a different fund name, but Code 09:48:33</p> <p>25 Hennessy Simmons, CHS if you will, Apollo, 09:48:37</p>

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<p style="text-align: right;">18</p> <p>1 CUTRONE</p> <p>2 and I think it is Apollo Investments, and 09:48:40</p> <p>3 Falcon investments are the three primary 09:48:43</p> <p>4 shareholders. Together they own 95 to 97 09:48:48</p> <p>5 percent of the company. 09:48:54</p> <p>6 Q. Do you know when LVI Parent was 09:48:58</p> <p>7 formed? 09:49:00</p> <p>8 A. 2002 I believe. 09:49:01</p> <p>9 Q. Does LVI Parent have a board of 09:49:04</p> <p>10 directors? 09:49:09</p> <p>11 A. Yes. 09:49:09</p> <p>12 Q. And how many people are 09:49:10</p> <p>13 currently on the board? 09:49:11</p> <p>14 A. I believe there are currently 09:49:12</p> <p>15 eight members on the board. 09:49:14</p> <p>16 Q. Can you give me their names? 09:49:15</p> <p>17 A. From Code Hennessy you have 09:49:17</p> <p>18 Brian Simmons and Rob Hogan. From Apollo 09:49:21</p> <p>19 you have Rajay Bagaria and Gerald Girardi. 09:49:28</p> <p>20 From Falcon you have John Schnabel. You 09:49:37</p> <p>21 have two outside directors Robert Buck, 09:49:41</p> <p>22 Bob Buck, and Richard Fiorucci, and Scott 09:49:44</p> <p>23 State. So two, four, five, six -- eight. 09:49:48</p> <p>24 Q. Okay. And were all of these 09:49:53</p> <p>25 people on the board in the first half of 09:49:54</p>	<p style="text-align: right;">20</p> <p>1 CUTRONE</p> <p>2 had quarterly board meetings, which I 09:51:05</p> <p>3 attended. 09:51:08</p> <p>4 Q. Okay. And in what capacity did 09:51:09</p> <p>5 you attend? 09:51:11</p> <p>6 A. As CFO. 09:51:12</p> <p>7 Q. Okay. Okay. What is LVI 09:51:13</p> <p>8 Acquisition Corp.? 09:51:19</p> <p>9 A. Like LVI Parent, it was a 09:51:19</p> <p>10 holding company as well. 09:51:21</p> <p>11 Q. Okay. What is the relationship 09:51:22</p> <p>12 between LVI Acquisition and LVI Parent? 09:51:26</p> <p>13 A. Currently, LVI Invest -- first 09:51:28</p> <p>14 of all LVI Acquisition changed its name to 09:51:33</p> <p>15 LVI Invest and is now a minority owner of 09:51:38</p> <p>16 LVI Parent. 09:51:41</p> <p>17 Q. Do you know what percentage LVI 09:51:42</p> <p>18 Invest owns of LVI Parent? 09:51:45</p> <p>19 A. Roughly 2 or 3 percent. 09:51:46</p> <p>20 Q. Okay. And -- and who owns LVI 09:51:48</p> <p>21 Invest? 09:51:53</p> <p>22 A. LVI Invest is owned by -- 09:51:53</p> <p>23 primarily by Code Hennessy Simmons and 09:51:56</p> <p>24 others. They own roughly 85 percent of 09:51:59</p> <p>25 LVI Invest. 09:52:02</p>
<p style="text-align: right;">19</p> <p>1 CUTRONE</p> <p>2 November of 2010? 09:49:59</p> <p>3 A. Yes. 09:50:01</p> <p>4 Q. Okay. Was anyone else on the 09:50:03</p> <p>5 board in the first half of November of 09:50:06</p> <p>6 2010? 09:50:09</p> <p>7 A. In the first half. I don't 09:50:10</p> <p>8 know. I don't think so. 09:50:12</p> <p>9 Q. Okay. When Mr. Fried was 09:50:13</p> <p>10 employed by LVI Services, was he on the 09:50:15</p> <p>11 board of directors of LVI Parent? 09:50:18</p> <p>12 A. Yes. 09:50:20</p> <p>13 Q. And do you know if Mr. Fried and 09:50:26</p> <p>14 Scott State served on the board of LVI 09:50:30</p> <p>15 Parent at the same time? 09:50:33</p> <p>16 A. I don't know. 09:50:33</p> <p>17 Q. Okay. Now, did you attend any 09:50:36</p> <p>18 board meetings of LVI Parent? 09:50:39</p> <p>19 A. Yes. 09:50:42</p> <p>20 Q. Did you regularly attend board 09:50:44</p> <p>21 meetings of LVI Parent? 09:50:46</p> <p>22 A. To the extent there were because 09:50:49</p> <p>23 prior to October of '10 the ultimate 09:50:52</p> <p>24 parent was a different corporation, which 09:50:58</p> <p>25 was LVI Acquisition. So LVI Acquisition 09:51:01</p>	<p style="text-align: right;">21</p> <p>1 CUTRONE</p> <p>2 Q. Sorry. What was the -- 09:52:04</p> <p>3 A. They own roughly 85 percent of 09:52:05</p> <p>4 LVI Invest. 09:52:08</p> <p>5 Q. No. The name of the second -- 09:52:09</p> <p>6 A. Others. 09:52:10</p> <p>7 Q. Others. Okay? 09:52:12</p> <p>8 A. Primarily individuals. 09:52:13</p> <p>9 Q. Okay. Does LVI Parent have any 09:52:14</p> <p>10 employees? 09:52:17</p> <p>11 A. No. 09:52:17</p> <p>12 Q. Does LVI Parent have any 09:52:17</p> <p>13 officers? 09:52:21</p> <p>14 A. Yes. 09:52:22</p> <p>15 Q. How many? 09:52:24</p> <p>16 A. I don't know offhand. 09:52:25</p> <p>17 Q. Do you know their -- their 09:52:29</p> <p>18 positions? 09:52:32</p> <p>19 A. I know I am vice president of 09:52:33</p> <p>20 LVI Parent. Sitting here today, I 09:52:36</p> <p>21 just -- I don't want to guess at the other 09:52:41</p> <p>22 officers. 09:52:44</p> <p>23 Q. Okay. And you're also a vice 09:52:44</p> <p>24 president of LVI Services? 09:52:47</p> <p>25 A. Yes, sir. 09:52:48</p>

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<p style="text-align: right;">22</p> <p>1 CUTRONE</p> <p>2 Q. Okay. Do you know anyone else 09:52:49</p> <p>3 who is an officer of LVI Parent other than 09:52:51</p> <p>4 yourself? 09:52:54</p> <p>5 A. Scott State, Joseph Annarumma, 09:52:55</p> <p>6 and I am -- I would be guessing after 09:53:06</p> <p>7 that. I'm not sure. 09:53:09</p> <p>8 Q. Okay. And do you know what 09:53:10</p> <p>9 Scott State's job title is as an officer 09:53:12</p> <p>10 of LVI Parent? 09:53:14</p> <p>11 A. President I believe. 09:53:15</p> <p>12 Q. And he is also the president of 09:53:19</p> <p>13 LVI Services? 09:53:23</p> <p>14 A. Correct. 09:53:24</p> <p>15 Q. And do you know what Mr. 09:53:25</p> <p>16 Annarumma's job title is as an officer of 09:53:26</p> <p>17 LVI Parent? 09:53:29</p> <p>18 A. Vice president and treasurer and 09:53:30</p> <p>19 secretary. 09:53:33</p> <p>20 Q. And does he hold the same titles 09:53:33</p> <p>21 with LVI Services, Inc.? 09:53:39</p> <p>22 A. Yes. 09:53:41</p> <p>23 Q. Is Jeffrey Smith an officer of 09:53:42</p> <p>24 LVI Parent? 09:53:46</p> <p>25 A. No. 09:53:47</p>	<p style="text-align: right;">24</p> <p>1 CUTRONE</p> <p>2 Q. Does LVI Parent have its own 09:54:48</p> <p>3 bank account? 09:54:51</p> <p>4 A. I am not sure. 09:54:51</p> <p>5 Q. Does LVI Parent have any 09:54:54</p> <p>6 offices? 09:54:57</p> <p>7 A. None outside of 80 Broad Street. 09:54:57</p> <p>8 In other words, 80 Broad is our -- the 09:55:04</p> <p>9 office of LVI Services, Inc. That is also 09:55:06</p> <p>10 the mailing address for LVI Parent Corp. 09:55:09</p> <p>11 as well. 09:55:11</p> <p>12 Q. And is that where LVI Parent is 09:55:12</p> <p>13 headquartered? 09:55:14</p> <p>14 A. Again, that is -- yes, that is 09:55:15</p> <p>15 the corporate office if you will. 09:55:17</p> <p>16 Q. Okay. Now, other than LVI 09:55:18</p> <p>17 Services, Inc., does LVI Parent have any 09:55:22</p> <p>18 subsidiaries? 09:55:24</p> <p>19 A. Not directly. 09:55:25</p> <p>20 Q. Okay. How about indirectly? 09:55:27</p> <p>21 A. Well, LVI Services, Inc. has 09:55:29</p> <p>22 several wholly-owned subsidiaries. 09:55:33</p> <p>23 Q. And is LVI Services a wholly- 09:55:35</p> <p>24 owned subsidiary of LVI Parent? 09:55:38</p> <p>25 A. Yes. 09:55:40</p>
<p style="text-align: right;">23</p> <p>1 CUTRONE</p> <p>2 Q. Who is Jeffrey Smith? 09:53:56</p> <p>3 A. Jeffrey Smith is an attorney for 09:53:58</p> <p>4 Sidley Austin, and Sidley Austin is the 09:53:59</p> <p>5 company's general counsel -- outside 09:54:01</p> <p>6 counsel. Excuse me. 09:54:03</p> <p>7 Q. Does Mr. Smith serve as 09:54:04</p> <p>8 secretary to LVI Parent? 09:54:05</p> <p>9 A. He attends board meetings and 09:54:07</p> <p>10 acts as secretary, so he takes the 09:54:10</p> <p>11 minutes. 09:54:12</p> <p>12 Q. Why doesn't Mr. -- do you know 09:54:12</p> <p>13 why Mr. Annarumma doesn't take the minutes 09:54:17</p> <p>14 as secretary? 09:54:20</p> <p>15 A. It's just not been our practice. 09:54:21</p> <p>16 Q. Okay. How long has Mr. Smith 09:54:24</p> <p>17 been taking minutes at LVI Parent board 09:54:27</p> <p>18 meetings? 09:54:29</p> <p>19 A. The last several years. It 09:54:30</p> <p>20 could be as far back as 2005 but certainly 09:54:33</p> <p>21 over the last couple of years. 09:54:36</p> <p>22 Q. Okay. And does LVI Parent own 09:54:38</p> <p>23 any assets? 09:54:40</p> <p>24 A. Its only asset is its 09:54:41</p> <p>25 investments in LVI Services, Inc. 09:54:46</p>	<p style="text-align: right;">25</p> <p>1 CUTRONE</p> <p>2 Q. Now, what is the relationship, 09:55:40</p> <p>3 if any, between LVI Acquisition and LVI 09:55:44</p> <p>4 Services? 09:55:48</p> <p>5 A. Currently none other than LVI 09:55:49</p> <p>6 Invest is indirectly a minority owner of 09:55:56</p> <p>7 LVI Services, Inc. through its 09:55:59</p> <p>8 investment -- their ownership interest in 09:56:02</p> <p>9 LVI Parent. 09:56:04</p> <p>10 Q. Okay. Now, does LVI Services 09:56:05</p> <p>11 have a board of directors? 09:56:08</p> <p>12 A. Yes. 09:56:09</p> <p>13 Q. And how many people are 09:56:11</p> <p>14 currently on that board? 09:56:13</p> <p>15 A. I believe Services, Inc. is just 09:56:14</p> <p>16 Scott and I. 09:56:22</p> <p>17 Q. And was Mr. Fried on the board 09:56:23</p> <p>18 at any time of LVI Services? 09:56:24</p> <p>19 A. Yes. 09:56:28</p> <p>20 Q. And did there come a time when 09:56:28</p> <p>21 he was no longer on the board? 09:56:36</p> <p>22 A. Yes. 09:56:37</p> <p>23 Q. And when was this? 09:56:38</p> <p>24 A. I don't recall. 09:56:39</p> <p>25 Q. Do you know why he was -- was he 09:56:40</p>

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<p style="text-align: right;">30</p> <p>1 CUTRONE</p> <p>2 decisions or resolutions should be made by 10:00:38</p> <p>3 the board of directors of LVI Parent? 10:00:40</p> <p>4 A. It depends on the situation and 10:00:43</p> <p>5 circumstances I guess. I'm not sure I 10:00:46</p> <p>6 understand the question. 10:00:50</p> <p>7 Q. Well, how do you know if a 10:00:51</p> <p>8 resolution should be made by the board of 10:00:53</p> <p>9 directors of LVI Services or whether it 10:00:56</p> <p>10 should be made by the board of LVI Parent? 10:00:58</p> <p>11 A. Offhand I don't know. 10:01:01</p> <p>12 Q. So has there ever been a time 10:01:03</p> <p>13 where the board of LVI Services decided 10:01:07</p> <p>14 that LVI -- the board of LVI Parent should 10:01:10</p> <p>15 make a resolution? 10:01:13</p> <p>16 A. Again, there was no formal 10:01:15</p> <p>17 meetings of LVI Services, Inc.'s board. 10:01:17</p> <p>18 It -- there was a board consisting of two, 10:01:20</p> <p>19 and it would always -- and I say always 10:01:24</p> <p>20 because I do not recall ever having a 10:01:29</p> <p>21 formal meeting where there was minutes of 10:01:31</p> <p>22 the board of LVI Services, Inc. The only 10:01:32</p> <p>23 time the board took action was to execute 10:01:35</p> <p>24 resolutions in lieu of a meeting. 10:01:39</p> <p>25 Q. Okay. So it wasn't -- was 10:01:41</p>	<p style="text-align: right;">32</p> <p>1 CUTRONE</p> <p>2 Q. Offices. 10:02:52</p> <p>3 A. Yes. 10:02:53</p> <p>4 Q. How many approximately? 10:02:54</p> <p>5 A. We have 80 Broad Street for one. 10:02:56</p> <p>6 We have an office in Westport that is 10:03:05</p> <p>7 effectively LVI Services, Inc./LVI 10:03:07</p> <p>8 Parent, LVI Acquisition just like 80 Broad 10:03:11</p> <p>9 Street, and we have an office in Orange, 10:03:14</p> <p>10 Texas, which houses our national director 10:03:16</p> <p>11 of health and safety. It is considered a 10:03:20</p> <p>12 corporate office, if you will, and those 10:03:22</p> <p>13 employees work for LVI Services, Inc. We 10:03:24</p> <p>14 have an office in Colorado where our CEO 10:03:26</p> <p>15 and COO call their primary place of 10:03:32</p> <p>16 business. I don't know exactly where in 10:03:36</p> <p>17 Colorado offhand, and I believe that 10:03:39</p> <p>18 constitutes all the offices of the 10:03:45</p> <p>19 company. 10:03:48</p> <p>20 Q. So about five? 10:03:48</p> <p>21 A. Four. 10:03:49</p> <p>22 Q. Four offices. 10:03:49</p> <p>23 And where is LVI Services 10:03:52</p> <p>24 headquartered? 10:03:55</p> <p>25 A. It is always been 80 Broad 10:03:56</p>
<p style="text-align: right;">31</p> <p>1 CUTRONE</p> <p>2 it -- when you discussed with the other 10:01:45</p> <p>3 board members of LVI Services whether to 10:01:56</p> <p>4 sign a resolution or make a resolution, 10:01:59</p> <p>5 did there ever come a time where the board 10:02:02</p> <p>6 decided that perhaps the parent -- the 10:02:06</p> <p>7 board of directors of the parent should 10:02:08</p> <p>8 make the resolution? 10:02:10</p> <p>9 A. A, I don't recall there ever 10:02:12</p> <p>10 being any discussions of the board of LVI 10:02:14</p> <p>11 Services formally or informally. Although 10:02:18</p> <p>12 I mentioned before we might get together 10:02:20</p> <p>13 by conversation or what have you, but it 10:02:22</p> <p>14 might be something as simple as, oh, we 10:02:24</p> <p>15 need to sign a resolution to elect so and 10:02:27</p> <p>16 so as officer of the company. Okay. Send 10:02:29</p> <p>17 me the resolution, and I'll sign it. That 10:02:31</p> <p>18 is the conversation, but I don't recall 10:02:33</p> <p>19 there ever being a time where there was a 10:02:35</p> <p>20 discussion where well who should sign that 10:02:37</p> <p>21 resolution, should it be Services, should 10:02:39</p> <p>22 it be Parent, no. 10:02:42</p> <p>23 Q. Okay. Now, does LVI Services 10:02:43</p> <p>24 have any offices? 10:02:49</p> <p>25 A. Offices or officers? 10:02:50</p>	<p style="text-align: right;">33</p> <p>1 CUTRONE</p> <p>2 Street. 10:04:01</p> <p>3 Q. And is that where you maintain 10:04:01</p> <p>4 an office? 10:04:03</p> <p>5 A. Yes. 10:04:03</p> <p>6 Q. Do you work at any other offices 10:04:04</p> <p>7 regularly? 10:04:05</p> <p>8 A. No. 10:04:06</p> <p>9 Q. Just the one at 80 Broad Street? 10:04:07</p> <p>10 A. Yes. 10:04:11</p> <p>11 Q. And does LVI Services have any 10:04:11</p> <p>12 employees? 10:04:14</p> <p>13 A. Yes. 10:04:14</p> <p>14 Q. Approximately how many? 10:04:15</p> <p>15 A. Thirty. 10:04:16</p> <p>16 Q. And does LVI Services have any 10:04:19</p> <p>17 officers? 10:04:23</p> <p>18 A. Yes. 10:04:24</p> <p>19 Q. About how many? 10:04:25</p> <p>20 A. Six to ten. 10:04:27</p> <p>21 Q. Now, prior to 2006, do you 10:04:30</p> <p>22 recall what Mr. Fried's job title as LVI 10:04:45</p> <p>23 Services was? 10:04:48</p> <p>24 MS. SELTZER: Prior to January 10:04:50</p> <p>25 of '06? When do you want? 10:04:52</p>

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<p style="text-align: right;">34</p> <p>1 CUTRONE</p> <p>2 MR. DATOO: Yes, prior to 2006. 10:04:54</p> <p>3 So -- 10:04:56</p> <p>4 A. Burt was always president and 10:04:57</p> <p>5 CEO. 10:04:59</p> <p>6 Q. Okay. And do you know how long 10:04:59</p> <p>7 he was president and CEO? 10:05:03</p> <p>8 A. Probably as long as I was vice 10:05:05</p> <p>9 president and CFO. 10:05:08</p> <p>10 Q. Okay. Do you know what his job 10:05:09</p> <p>11 duties were as CEO? 10:05:12</p> <p>12 MS. SELTZER: Objection. At 10:05:15</p> <p>13 any particular point in time? 10:05:16</p> <p>14 MR. DATOO: This is all prior 10:05:18</p> <p>15 to 2006. 10:05:19</p> <p>16 A. As president and CEO, you know, 10:05:22</p> <p>17 Burt was the leader of the business, the 10:05:25</p> <p>18 strategic leader, and handled the overall 10:05:29</p> <p>19 direction of the company. 10:05:37</p> <p>20 Q. And during the time he was CEO 10:05:38</p> <p>21 prior to 2006, how was LVI Services doing 10:05:42</p> <p>22 financially? 10:05:47</p> <p>23 A. Prior to -- the whole 20 10:05:48</p> <p>24 years -- 10:05:53</p> <p>25 Q. Yes, prior to January 1, 2006 10:05:54</p>	<p style="text-align: right;">36</p> <p>1 CUTRONE</p> <p>2 A. How his work performance was? 10:06:47</p> <p>3 Well, we were a successful contracting 10:06:49</p> <p>4 organization that continued to grow in its 10:06:53</p> <p>5 space and become the dominant leader in 10:06:58</p> <p>6 the industry. So I would say that is 10:07:01</p> <p>7 fairly good marks -- 10:07:02</p> <p>8 Q. Okay. 10:07:04</p> <p>9 A. -- for a CEO. 10:07:04</p> <p>10 Q. Did you work closely with Mr. 10:07:06</p> <p>11 Fried when he was CEO prior to 2006? 10:07:08</p> <p>12 A. Sure. 10:07:11</p> <p>13 Q. Now, did there come a time in 10:07:11</p> <p>14 2005 or 2006 when LVI Services began to 10:07:17</p> <p>15 look for a new CEO? 10:07:22</p> <p>16 A. Yes. 10:07:24</p> <p>17 Q. Do you know why that is? Why 10:07:25</p> <p>18 that was? Sorry. 10:07:32</p> <p>19 A. Yes, I have heard -- you know, 10:07:33</p> <p>20 Burt expressed back at the time that he 10:07:35</p> <p>21 wanted to find his successor, somebody to 10:07:38</p> <p>22 lead the company through its next 20 10:07:42</p> <p>23 years. So it was -- it was primarily, you 10:07:44</p> <p>24 know, Burt's desire to make sure he had a 10:07:50</p> <p>25 good succession plan. 10:07:52</p>
<p style="text-align: right;">35</p> <p>1 CUTRONE</p> <p>2 during the entire time that he was CEO 10:05:57</p> <p>3 that you know of. 10:06:00</p> <p>4 MS. SELTZER: So over a 20-year 10:06:01</p> <p>5 period? 10:06:02</p> <p>6 MR. DATOO: Yes. 10:06:03</p> <p>7 Q. Generally speaking how was LVI 10:06:04</p> <p>8 Services doing financially? 10:06:06</p> <p>9 A. We had our good years, and we 10:06:07</p> <p>10 had our bad years. 10:06:09</p> <p>11 Q. Okay. How about in '04, 2004, 10:06:10</p> <p>12 how was LVI Services doing financially? 10:06:12</p> <p>13 A. '04 was a very good year. We 10:06:15</p> <p>14 had four hurricanes in Florida, which 10:06:18</p> <p>15 contributed a significant amount of 10:06:21</p> <p>16 revenue to the bottom line of the company, 10:06:23</p> <p>17 stress and aggravation to go with it. 10:06:26</p> <p>18 Q. And how about in 2005? 10:06:28</p> <p>19 A. Similar. 10:06:30</p> <p>20 Q. Okay. Now, did there -- do you 10:06:31</p> <p>21 have personal knowledge of how Mr. Fried's 10:06:35</p> <p>22 work performance was as CEO prior to 2006? 10:06:37</p> <p>23 MS. SELTZER: Over the entire 10:06:44</p> <p>24 twenty-year period? 10:06:45</p> <p>25 MR. DATOO: Yes, in general. 10:06:47</p>	<p style="text-align: right;">37</p> <p>1 CUTRONE</p> <p>2 Q. Do you know why he wanted a 10:07:55</p> <p>3 successor? 10:07:56</p> <p>4 A. Meaning? 10:07:57</p> <p>5 Q. Do you know why he was looking 10:07:58</p> <p>6 for someone to succeed him? 10:07:59</p> <p>7 A. Because he couldn't do it 10:08:01</p> <p>8 forever. Right? You know, he was -- it 10:08:03</p> <p>9 is the old proverbial what if I get hit by 10:08:06</p> <p>10 a bus, and at some point I am going to 10:08:10</p> <p>11 retire, you know, and doing something 10:08:13</p> <p>12 else. He was deciding, you know, I am 10:08:15</p> <p>13 doing this for a period of time, and 10:08:17</p> <p>14 logically the company needs a successor to 10:08:19</p> <p>15 bring it to the next X of amount of years. 10:08:22</p> <p>16 Q. Do you know if he was looking to 10:08:27</p> <p>17 retire from LVI Services at that point? 10:08:28</p> <p>18 A. I know he was looking for his 10:08:30</p> <p>19 replacement, and I think you would always 10:08:32</p> <p>20 expect -- I don't know whether he expected 10:08:35</p> <p>21 to stay on as chairman or not, what his 10:08:38</p> <p>22 personal goals and aspirations were. I 10:08:41</p> <p>23 just know that he was looking for a 10:08:44</p> <p>24 replacement to take on the day-to-day 10:08:46</p> <p>25 responsibilities that he was then 10:08:47</p>

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<p>1 CUTRONE</p> <p>2 responsible for. 10:08:48</p> <p>3 Q. Did you ever have a conversation 10:08:49</p> <p>4 with him about what his role was going to 10:08:50</p> <p>5 be once his successor was named? 10:08:53</p> <p>6 A. Not specifically. 10:08:54</p> <p>7 Q. Okay. Did he ever tell you he 10:08:56</p> <p>8 wanted to retire prior to 2006? 10:08:58</p> <p>9 A. You know, not that I recall any 10:09:02</p> <p>10 specific conversations. 10:09:04</p> <p>11 Q. Do you know when 10:09:05</p> <p>12 approximately -- 10:09:16</p> <p>13 MR. DATOO: Strike that. 10:09:17</p> <p>14 Q. Do you know who Robert McNamara 10:09:18</p> <p>15 is? 10:09:20</p> <p>16 A. Yes. 10:09:20</p> <p>17 Q. Who is he? 10:09:20</p> <p>18 A. The former president and CEO of 10:09:21</p> <p>19 LVI Services, Inc. 10:09:25</p> <p>20 Q. And was he -- was Mr. McNamara 10:09:27</p> <p>21 the one who was hired to succeed Mr. Fried 10:09:33</p> <p>22 as CEO of LVI Services? 10:09:35</p> <p>23 A. At the time, yes. 10:09:38</p> <p>24 Q. Okay. And while Mr. McNamara 10:09:39</p> <p>25 was the CEO of LVI Services, what was Mr. 10:09:42</p>	<p>1 CUTRONE</p> <p>2 Q. When you refer to ultimate 10:11:03</p> <p>3 parent -- 10:11:05</p> <p>4 A. Right. 10:11:06</p> <p>5 Q. -- what company are you 10:11:07</p> <p>6 referring to? 10:11:08</p> <p>7 A. So LVI Acquisition became the 10:11:08</p> <p>8 ultimate parent in November of '05 when it 10:11:10</p> <p>9 acquired LVI Parent. 10:11:13</p> <p>10 Q. And when you refer to the 10:11:14</p> <p>11 intermediate -- 10:11:17</p> <p>12 A. You have -- the company has done 10:11:19</p> <p>13 four leveraged buyouts. Each time a new 10:11:22</p> <p>14 investment was going to come in to acquire 10:11:28</p> <p>15 the company, the business, it would form a 10:11:31</p> <p>16 Newco, invest its equity into that Newco 10:11:35</p> <p>17 and then Newco would acquire Old Co. So 10:11:39</p> <p>18 '97, 2002 -- well, '93, '97, 2002, 2005, 10:11:44</p> <p>19 there was always a Newco formed above the 10:11:54</p> <p>20 Old Co. at the time. 10:11:57</p> <p>21 Q. Okay. 10:11:57</p> <p>22 A. So LVI Services, Inc. was the 10:11:58</p> <p>23 company that first existed, the public 10:12:00</p> <p>24 parent in '93, and there was a Newco, and 10:12:02</p> <p>25 there was another Newco in '02, a Newco 10:12:06</p>
39	41
<p>1 CUTRONE</p> <p>2 Fried's job title? 10:09:46</p> <p>3 A. He was chairman. 10:09:47</p> <p>4 Q. Chairman of LVI Services? 10:09:48</p> <p>5 A. Chairman of the ultimate parent 10:09:51</p> <p>6 corp. I don't know that there was a 10:09:56</p> <p>7 formal distinction as chairman of LVI 10:09:58</p> <p>8 Service, Inc. and its subsidiaries. We 10:10:01</p> <p>9 were directors of LVI Services. Actually 10:10:05</p> <p>10 at that time, when Bob came on, Bob then 10:10:07</p> <p>11 became director with me of the 10:10:10</p> <p>12 subsidiaries. So Burt was on the board of 10:10:15</p> <p>13 the ultimate parent. I don't recall if he 10:10:19</p> <p>14 was on the board of the intermediary 10:10:21</p> <p>15 parent. It might have been Bob and I the 10:10:24</p> <p>16 rest of the way down like it used to be 10:10:27</p> <p>17 Burt and I the rest of the way down. So 10:10:30</p> <p>18 it was very much an order of things, if 10:10:33</p> <p>19 you will. 10:10:36</p> <p>20 Q. When you say "ultimate parent," 10:10:36</p> <p>21 what company are you referring to? 10:10:38</p> <p>22 A. In '05, in November of '05, LVI 10:10:40</p> <p>23 Acquisition now known as LVI Invest 10:10:43</p> <p>24 acquired an ownership of LVI Parent Corp. 10:10:47</p> <p>25 So -- I am sorry? What was the question? 10:11:00</p>	<p>1 CUTRONE</p> <p>2 in '05, and then we collapsed -- we merged 10:12:09</p> <p>3 out of existence a couple of those 10:12:12</p> <p>4 intermediary Newcos. So because we 10:12:16</p> <p>5 basically just had four Old Cos., so we 10:12:18</p> <p>6 basically merged them, and what you had 10:12:22</p> <p>7 was LVI Acquisition, LVI Parent, LVI 10:12:24</p> <p>8 Services, Inc. in late '05. 10:12:27</p> <p>9 Q. Okay. And while Mr. McNamara 10:12:29</p> <p>10 was the CEO of LVI Services, was Mr. Fried 10:12:34</p> <p>11 an employee of LVI Services, Inc. as well? 10:12:37</p> <p>12 A. Yes. 10:12:40</p> <p>13 Q. Okay. And do you know what his 10:12:41</p> <p>14 job title was as an employee of LVI 10:12:42</p> <p>15 Services, Inc.? 10:12:45</p> <p>16 A. His role was chairman. 10:12:45</p> <p>17 Q. Chairman. So he had the title 10:12:47</p> <p>18 chairman with LVI services, Inc. and with 10:12:50</p> <p>19 either of the ultimate parent or the 10:12:53</p> <p>20 intermediate parent? 10:12:57</p> <p>21 A. Again, what I had said is the 10:12:58</p> <p>22 ultimate parent Burt was chairman of. I 10:13:02</p> <p>23 don't know if there was a formal 10:13:05</p> <p>24 distinction of chairman of any of the 10:13:07</p> <p>25 board members of any parent below the 10:13:09</p>

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<p style="text-align: right;">42</p> <p>1 CUTRONE</p> <p>2 ultimate parent. 10:13:12</p> <p>3 Q. But he held the title of 10:13:13</p> <p>4 chairman as an employee with LVI Services 10:13:14</p> <p>5 while Mr. McNamara was CEO? 10:13:17</p> <p>6 A. So there by that distinction, it 10:13:19</p> <p>7 would clearly be as two-member boards Burt 10:13:21</p> <p>8 and I, and Burt was the chairman. Let's 10:13:24</p> <p>9 say it that way. So I just don't know if 10:13:26</p> <p>10 there was a formal distinction as a board 10:13:28</p> <p>11 member, even though his position as 10:13:31</p> <p>12 employee of Services was chairman. That 10:13:32</p> <p>13 is what we referred to him as, was 10:13:34</p> <p>14 chairman. 10:13:36</p> <p>15 Q. And while Mr. McNamara was CEO, 10:13:36</p> <p>16 what were Mr. Fried's job duties? 10:13:39</p> <p>17 A. Primarily, you know, as I 10:13:43</p> <p>18 understand it, Burt still 10:13:47</p> <p>19 maintained -- was in-house general 10:13:51</p> <p>20 counsel. So from -- primarily, you know, 10:13:52</p> <p>21 legal matters would run through Burt, and 10:13:56</p> <p>22 primarily it was strategic in nature. His 10:14:05</p> <p>23 position was more strategic. If we had 10:14:07</p> <p>24 any mergers or acquisition we were looking 10:14:12</p> <p>25 at, you know, he was chairman, and Bob 10:14:15</p>	<p style="text-align: right;">44</p> <p>1 CUTRONE</p> <p>2 through the corporate office in Westport. 10:15:23</p> <p>3 There was business development efforts 10:15:25</p> <p>4 that went on out of that office, and I 10:15:26</p> <p>5 don't know if he had a personal 10:15:29</p> <p>6 relationship, working relationship with 10:15:32</p> <p>7 the woman that handled that, but clearly 10:15:34</p> <p>8 he had an involvement when it came to 10:15:37</p> <p>9 overseeing, you know, what -- marketing 10:15:39</p> <p>10 materials, things of that nature. He -- I 10:15:41</p> <p>11 believe he had involvement in that respect 10:15:44</p> <p>12 because it was out of his office. Travel 10:15:47</p> <p>13 and -- travel went through the Westport 10:15:49</p> <p>14 office. So people who were going to 10:15:53</p> <p>15 travel for the company would -- would make 10:15:56</p> <p>16 their reservations through our reserve 10:15:58</p> <p>17 systems. And those would go through 10:16:01</p> <p>18 either Burt or -- or Shari for approval 10:16:02</p> <p>19 and processing. Those are some of the 10:16:05</p> <p>20 primary items -- 10:16:10</p> <p>21 Q. Okay. 10:16:11</p> <p>22 A. -- that I recall. 10:16:12</p> <p>23 Q. Those all that you know of? 10:16:13</p> <p>24 A. That I recall. 10:16:14</p> <p>25 Q. Okay. Now, while -- going back 10:16:15</p>
<p style="text-align: right;">43</p> <p>1 CUTRONE</p> <p>2 McNamara was president and CEO and ran the 10:14:17</p> <p>3 day-to-day operations. I reported to Bob, 10:14:21</p> <p>4 and Burt handled the legal and overall 10:14:22</p> <p>5 strategic role for the company and then 10:14:25</p> <p>6 certainly had other responsibilities that 10:14:27</p> <p>7 he and Bob agreed would be his 10:14:29</p> <p>8 responsibilities I guess. 10:14:32</p> <p>9 Q. Do you know what those were? 10:14:33</p> <p>10 A. Burt had involvement with our 10:14:34</p> <p>11 bonding line. So, you know, contract 10:14:39</p> <p>12 reviews and requests for bonds would 10:14:44</p> <p>13 come -- again would come through But. He 10:14:47</p> <p>14 would sign off on what bond requests we 10:14:50</p> <p>15 were making. So legal and contractual 10:14:52</p> <p>16 matters were primarily in Burt's 10:14:54</p> <p>17 wheelhouse. He also had -- again, 10:14:56</p> <p>18 when -- when we looked at different 10:15:01</p> <p>19 companies for acquisitions like we 10:15:04</p> <p>20 acquired a business in '07; we acquired a 10:15:05</p> <p>21 business in '09, he would play an active 10:15:08</p> <p>22 role in that and, you know, evaluating 10:15:11</p> <p>23 whether the company was for us and then in 10:15:13</p> <p>24 participating and negotiating the deal. 10:15:15</p> <p>25 There was other items that ran 10:15:19</p>	<p style="text-align: right;">45</p> <p>1 CUTRONE</p> <p>2 a bit prior to 2006. 10:16:23</p> <p>3 A. Okay. 10:16:29</p> <p>4 Q. When Mr. Fried was 10:16:29</p> <p>5 CE -- president and CEO of LVI Services, 10:16:32</p> <p>6 where did he maintain an office? 10:16:35</p> <p>7 A. Early on we were together either 10:16:37</p> <p>8 at 80 Broad Street or prior to that it was 10:16:42</p> <p>9 470 Park Avenue South, and prior to that 10:16:47</p> <p>10 was 345 Hudson Street. 10:16:50</p> <p>11 Q. All in New York City? 10:16:52</p> <p>12 A. Yes. 10:16:54</p> <p>13 Q. And then did there come a time 10:16:54</p> <p>14 when an office in Westport opened? 10:16:56</p> <p>15 A. Yes. 10:16:58</p> <p>16 Q. And what -- do you recall when 10:16:59</p> <p>17 that was? 10:17:00</p> <p>18 A. Sometime prior. We could check 10:17:01</p> <p>19 the lease. I don't recall how far back we 10:17:09</p> <p>20 opened the office, but clearly it was 10:17:13</p> <p>21 before '05, and it was sometime after Blue 10:17:14</p> <p>22 Point's investment in '02. So somewhere 10:17:21</p> <p>23 between 2002, 2005 we opened up Westport. 10:17:23</p> <p>24 Q. And when that Westport office 10:17:28</p> <p>25 opened up and while Mr. Fried was CEO, did 10:17:30</p>

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<p style="text-align: right;">46</p> <p>1 CUTRONE</p> <p>2 he spend any time in the Westport office? 10:17:32</p> <p>3 A. Yes. 10:17:34</p> <p>4 Q. Do you know approximately -- and 10:17:35</p> <p>5 did he also spend any time in the New York 10:17:36</p> <p>6 office during that same time period? 10:17:38</p> <p>7 A. Early on, the first year or two, 10:17:41</p> <p>8 he would split time. He would spend a 10:17:43</p> <p>9 couple of days in New York and a couple of 10:17:45</p> <p>10 days in Westport. Usually two in New York 10:17:47</p> <p>11 and three in Westport. It was 10:17:49</p> <p>12 about -- but it was whatever he decided. 10:17:51</p> <p>13 It wasn't strict. But generally he was in 10:17:53</p> <p>14 the office a couple of days a week in the 10:17:55</p> <p>15 New York office, and then at some point I 10:17:57</p> <p>16 want to say it clearly went -- then Burt 10:18:01</p> <p>17 was exclusively in Westport. 10:18:05</p> <p>18 Q. Did he ever come to the New York 10:18:08</p> <p>19 office when Mr. McNamara was CEO? 10:18:09</p> <p>20 A. Yes. If there was a meeting or 10:18:13</p> <p>21 whatever the case may be, but it wasn't a 10:18:14</p> <p>22 set diet. It was on an as-needed basis. 10:18:18</p> <p>23 He would come down with Bob to -- to meet 10:18:22</p> <p>24 with Bob for things. 10:18:26</p> <p>25 Q. When you say he came down with 10:18:27</p>	<p style="text-align: right;">48</p> <p>1 CUTRONE</p> <p>2 out of the New York office? 10:19:16</p> <p>3 A. Really -- I really can't. I 10:19:16</p> <p>4 would say almost never that he worked out 10:19:18</p> <p>5 of the New York office. 10:19:20</p> <p>6 Q. Can you tell me approximately 10:19:24</p> <p>7 how many times per month Mr. Fried had a 10:19:28</p> <p>8 meeting at the New York office? 10:19:29</p> <p>9 A. I don't know. You know -- you 10:19:30</p> <p>10 know, a couple of times a year maybe. 10:19:31</p> <p>11 Maybe more but not frequent. 10:19:34</p> <p>12 Q. Okay. And while Mr. McNamara 10:19:35</p> <p>13 was CEO, did Mr. Fried ever come to New 10:19:38</p> <p>14 York to meet with clients or have any 10:19:41</p> <p>15 client meetings? 10:19:43</p> <p>16 A. He may have. I don't know. I 10:19:43</p> <p>17 didn't keep his calendar, so I don't know. 10:19:54</p> <p>18 Q. Now, while Mr. McNamara was CEO, 10:19:57</p> <p>19 how was LVI Services doing financially 10:20:01</p> <p>20 during that period of time? 10:20:03</p> <p>21 A. We had our good years, and we 10:20:05</p> <p>22 had our bad years. 10:20:07</p> <p>23 Q. Okay. How about in 2008? 10:20:08</p> <p>24 A. 2008 was a fairly good year in 10:20:13</p> <p>25 both revenue and operating income. 10:20:20</p>
<p style="text-align: right;">47</p> <p>1 CUTRONE</p> <p>2 Bob -- 10:18:30</p> <p>3 A. To meet with Bob. 10:18:30</p> <p>4 Q. Can you tell me how many times a 10:18:31</p> <p>5 week Mr. Fried would work out of the New 10:18:33</p> <p>6 York office while Mr. McNamara was CEO? 10:18:35</p> <p>7 A. I wouldn't say -- It is 10:18:37</p> <p>8 sometimes per week. It would -- he never 10:18:39</p> <p>9 really worked out of the 80 Broad Street 10:18:40</p> <p>10 office. He would come down for meetings. 10:18:43</p> <p>11 So how many times I don't know. It would 10:18:44</p> <p>12 depend on whether there was a -- It would 10:18:46</p> <p>13 just depend on the nature of the meeting. 10:18:48</p> <p>14 If it required Burt's presence physically, 10:18:50</p> <p>15 he would be at 80 Broad Street, and then 10:18:52</p> <p>16 he might stay there for a couple of hours 10:18:55</p> <p>17 and go back to Westport. So generally 10:18:57</p> <p>18 never -- he didn't maintain an office at 10:18:59</p> <p>19 30 Broad Street. He would be there for 10:19:01</p> <p>20 meetings, and when he needed to work he 10:19:03</p> <p>21 would work out of a guest office, so his 10:19:06</p> <p>22 primary location was Westport. 10:19:08</p> <p>23 Q. Okay. So can you give me an 10:19:10</p> <p>24 approximate number of how many times a 10:19:11</p> <p>25 month he worked out of -- Mr. Fried worked 10:19:13</p>	<p style="text-align: right;">49</p> <p>1 CUTRONE</p> <p>2 Q. And how about in 2009? 10:20:22</p> <p>3 A. Much softer volume. You know, 10:20:24</p> <p>4 the economic downturn took its toll. 10:20:30</p> <p>5 The -- we kind of stayed afloat in '08 10:20:34</p> <p>6 because we had a couple of big contracts 10:20:37</p> <p>7 and backlog that helped us maintain a 10:20:39</p> <p>8 level of business through 2007, 2008, but 10:20:42</p> <p>9 we weren't able to replenish that business 10:20:46</p> <p>10 sufficient enough to maintain that level 10:20:50</p> <p>11 of business. So in '09 and then in 2010 10:20:51</p> <p>12 the volumes were significantly less than 10:20:55</p> <p>13 what they were in 2007, 2008. 10:20:58</p> <p>14 Q. In your opinion, would '09 be 10:21:00</p> <p>15 considered a bad year? 10:21:03</p> <p>16 A. You know, I wouldn't say a bad 10:21:04</p> <p>17 year because the one thing I'll say that 10:21:07</p> <p>18 -- what the company was able to do is 10:21:09</p> <p>19 maintain fairly strong gross margins on 10:21:17</p> <p>20 the work that it did perform, and it was 10:21:17</p> <p>21 able to manage its overhead, spend 10:21:17</p> <p>22 reasonably well to maintain an operating 10:21:20</p> <p>23 profit, but to the extent that it was 10:21:23</p> <p>24 still saddled with the same debit load 10:21:27</p> <p>25 that you had for a company, you know, that 10:21:32</p>

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<p style="text-align: right;">62</p> <p>1 CUTRONE</p> <p>2 MS. SELTZER: I object to the 10:43:23</p> <p>3 form. You can answer. 10:43:24</p> <p>4 A. Again, I don't evaluate the 10:43:25</p> <p>5 chairman's performance. It is not for me 10:43:27</p> <p>6 to evaluate. 10:43:32</p> <p>7 Q. Okay. Now, did there come a 10:43:33</p> <p>8 time when Mr. Fried became the interim CEO 10:43:38</p> <p>9 of LVI Services? 10:43:41</p> <p>10 A. Yes. 10:43:43</p> <p>11 Q. Do you know when that was? 10:43:44</p> <p>12 A. Shortly after Mr. Freed's 10:43:45</p> <p>13 requests McNamara left. 10:43:48</p> <p>14 Q. And do you know when that was? 10:43:49</p> <p>15 A. He resigned, advised us of his 10:43:51</p> <p>16 resignation, you know, a couple of days or 10:43:55</p> <p>17 a day after we executed the change order 10:43:57</p> <p>18 for 130 Liberty Street, so early March is 10:44:00</p> <p>19 when he resigned. I want to say he stayed 10:44:03</p> <p>20 on for the better part of March, and then 10:44:05</p> <p>21 at that point Burt came on as interim 10:44:09</p> <p>22 chairman -- interim -- interim president 10:44:12</p> <p>23 and CEO. 10:44:15</p> <p>24 Q. Do you know why Burt came on as 10:44:17</p> <p>25 interim president and CEO? 10:44:19</p>	<p style="text-align: right;">64</p> <p>1 CUTRONE</p> <p>2 to Bob coming aboard. You know, he -- it 10:45:27</p> <p>3 is in his blood. It is like, you know, 10:45:31</p> <p>4 falling off a bike. So for Burt to -- and 10:45:34</p> <p>5 he was always active during the time that 10:45:37</p> <p>6 Bob was there. So for Burt to step back 10:45:39</p> <p>7 in and perform the role of president and 10:45:41</p> <p>8 CEO, contract reviews, bid reviews, 10:45:43</p> <p>9 engaging with me on financial affairs, 10:45:48</p> <p>10 whatever the case may, you know, it was an 10:45:50</p> <p>11 old hat for him. Why not? I think there 10:45:53</p> <p>12 was no better choice on an interim basis 10:45:55</p> <p>13 than Burt if he was willing to do it. 10:45:59</p> <p>14 Q. Okay. And do you know if Mr. 10:46:01</p> <p>15 Fried continued to perform his prior job 10:46:05</p> <p>16 duties as chairman while he was president 10:46:07</p> <p>17 -- interim president and CEO? 10:46:09</p> <p>18 A. Yes. I don't -- I don't believe 10:46:11</p> <p>19 anybody stepped in to -- as active 10:46:15</p> <p>20 chairman or acting chairman while Burt was 10:46:18</p> <p>21 acting president and CEO. The team 10:46:20</p> <p>22 rallied around him, and we got the job 10:46:25</p> <p>23 done. We did what we had to do. 10:46:28</p> <p>24 Q. And in your opinion how was Mr. 10:46:30</p> <p>25 Fried's work performance as interim 10:46:32</p>
<p style="text-align: right;">63</p> <p>1 CUTRONE</p> <p>2 A. That was the decision of the 10:44:21</p> <p>3 board. 10:44:22</p> <p>4 Q. Do you know if Burt was asked to 10:44:25</p> <p>5 be president and interim CEO? 10:44:34</p> <p>6 A. What I recall is that shortly 10:44:35</p> <p>7 after McNamara resigned, the board 10:44:37</p> <p>8 retained a consultant or had a consultant 10:44:40</p> <p>9 come in to meet with the team to meet with 10:44:42</p> <p>10 myself and others I believe to assess, you 10:44:47</p> <p>11 know, what does the company need now that 10:44:51</p> <p>12 its CEO has abruptly left. It didn't take 10:44:53</p> <p>13 long to convince that consultant that the 10:44:57</p> <p>14 business didn't need any outside help, 10:45:00</p> <p>15 that, you know, Burt was -- and Burt and 10:45:04</p> <p>16 the team were more than capable of 10:45:07</p> <p>17 handling its affairs while a search went 10:45:09</p> <p>18 on for a replacement, and that is what we 10:45:12</p> <p>19 did, and I supported that. 10:45:14</p> <p>20 Q. Okay. Do you -- in your 10:45:15</p> <p>21 opinion, was Burt a good choice? 10:45:17</p> <p>22 A. Absolutely. 10:45:20</p> <p>23 Q. Why? 10:45:20</p> <p>24 A. Why not? I mean it was the role 10:45:21</p> <p>25 he held for some fifteen plus years prior 10:45:23</p>	<p style="text-align: right;">65</p> <p>1 CUTRONE</p> <p>2 president and CEO? 10:46:34</p> <p>3 A. Well, again it -- in my area, 10:46:35</p> <p>4 you know, it was fine. There is 10:46:37</p> <p>5 no -- just like before, just like then, 10:46:40</p> <p>6 you know, I would engage him on things 10:46:43</p> <p>7 that he needed to be engaged on but 10:46:46</p> <p>8 otherwise went about doing the role that I 10:46:49</p> <p>9 have been doing for the last 20 years and 10:46:51</p> <p>10 didn't need to bother him with a lot 10:46:54</p> <p>11 actually. You know, let's just go 10:46:56</p> <p>12 forward, keep doing what we are doing, 10:46:58</p> <p>13 take care of -- take care of your end of 10:47:00</p> <p>14 the business and, you know, go out and 10:47:04</p> <p>15 find a replacement. 10:47:06</p> <p>16 Q. And why were you trying to find 10:47:07</p> <p>17 a -- why wasn't Mr. Fried chosen as the 10:47:09</p> <p>18 permanent CEO and president, if you know? 10:47:15</p> <p>19 MS. SELTZER: I object to the 10:47:19</p> <p>20 form. Can you phrase it again? 10:47:20</p> <p>21 MR. DATOO: Sure. 10:47:21</p> <p>22 Q. Was Mr. Fried considered to be 10:47:21</p> <p>23 the permanent president and CEO of LVI 10:47:23</p> <p>24 Services? 10:47:26</p> <p>25 A. When the search went on for the 10:47:26</p>

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<p style="text-align: right;">66</p> <p>1 CUTRONE</p> <p>2 replacement for Bob you mean? 10:47:28</p> <p>3 Q. Yes. 10:47:30</p> <p>4 A. I don't know. I don't -- I 10:47:31</p> <p>5 don't think Burt -- well, I know Burt 10:47:32</p> <p>6 didn't want it. Burt didn't want to be a 10:47:36</p> <p>7 permanent replacement. Burt wanted to 10:47:39</p> <p>8 find another president and CEO. 10:47:41</p> <p>9 Q. Do you know if that is because 10:47:43</p> <p>10 he wanted to keep his chairman role? 10:47:44</p> <p>11 MS. SELTZER: Objection. 10:47:47</p> <p>12 A. You'll have to ask Burt. 10:47:48</p> <p>13 Q. Okay. Now, while Mr. Fried was 10:47:50</p> <p>14 the interim president and CEO, did he work 10:47:52</p> <p>15 out of the New York office? 10:47:55</p> <p>16 A. No. 10:47:56</p> <p>17 Q. Was he still based in -- 10:47:57</p> <p>18 A. Westport. 10:48:00</p> <p>19 Q. The Westport office? 10:48:01</p> <p>20 A. Yes. 10:48:02</p> <p>21 Q. Did he travel to New York more 10:48:03</p> <p>22 often to work out of the New York office 10:48:04</p> <p>23 while he was president -- interim 10:48:06</p> <p>24 president and CEO? 10:48:09</p> <p>25 A. No, not that I recall. There 10:48:10</p>	<p style="text-align: right;">68</p> <p>1 CUTRONE</p> <p>2 the management team was intact; the gross 10:49:23</p> <p>3 margins are intact; SGA, you know, 10:49:26</p> <p>4 somewhat rationalized given the lower 10:49:29</p> <p>5 volume, we just weren't -- simply weren't 10:49:33</p> <p>6 making enough money to support the debt 10:49:35</p> <p>7 load, and, therefore, it was evident we 10:49:37</p> <p>8 were going to be in default of our 10:49:40</p> <p>9 covenants. 10:49:42</p> <p>10 So the board understood that, 10:49:42</p> <p>11 and the lender group was approached. We 10:49:44</p> <p>12 retained a firm to assist in the 10:49:49</p> <p>13 restructuring of its debt instruments and 10:49:55</p> <p>14 equity investments, and that took 10:49:59</p> <p>15 basically a year because we started 10:50:03</p> <p>16 somewhere around September of '09 and 10:50:05</p> <p>17 completed October 8th, the final close, of 10:50:07</p> <p>18 '10. 10:50:11</p> <p>19 Q. And what was Mr. Fried's role in 10:50:11</p> <p>20 the restructuring? 10:50:13</p> <p>21 A. Like myself, you know, we -- we 10:50:14</p> <p>22 were there to, A, run the company and keep 10:50:22</p> <p>23 the wheels moving, B, provide information 10:50:26</p> <p>24 necessary to assist really the -- it was 10:50:30</p> <p>25 more the ownership group that was leading 10:50:35</p>
<p style="text-align: right;">67</p> <p>1 CUTRONE</p> <p>2 was no real need. Not really. He could 10:48:12</p> <p>3 do everything by phone and e-mail. So 10:48:15</p> <p>4 there was no need for him to be physically 10:48:17</p> <p>5 at 80 Broad Street. 10:48:19</p> <p>6 Q. Do you know if he was in New 10:48:20</p> <p>7 York meeting with clients while he was 10:48:22</p> <p>8 president and interim CEO? 10:48:24</p> <p>9 A. I don't know. 10:48:26</p> <p>10 Q. Okay. Now, while Mr. Fried was 10:48:26</p> <p>11 interim president and CEO, was LVI 10:48:35</p> <p>12 services going through a restructuring? 10:48:38</p> <p>13 A. Yes. 10:48:40</p> <p>14 Q. Okay. Why is that? 10:48:41</p> <p>15 A. In late 2009, probably mid 2009, 10:48:43</p> <p>16 the company's financial performance -- 10:48:57</p> <p>17 based on the company's financial 10:48:59</p> <p>18 performance it was evident that its 10:49:01</p> <p>19 business size and resulting profit was not 10:49:04</p> <p>20 going to be sufficient to maintain the 10:49:09</p> <p>21 covenant levels required under the 10:49:11</p> <p>22 existing debt agreements. So, as I said 10:49:14</p> <p>23 earlier, while we were still quote, 10:49:17</p> <p>24 unquote successful in that we were still 10:49:19</p> <p>25 maintaining our presence in the industry, 10:49:21</p>	<p style="text-align: right;">69</p> <p>1 CUTRONE</p> <p>2 the efforts around the restructuring, you 10:50:41</p> <p>3 know, Code Hennessy as owner, Apollo as 10:50:46</p> <p>4 subordinate lender at that time and 10:50:52</p> <p>5 partial owner, minority owner, and the 10:50:54</p> <p>6 lender group. It was Code and Apollo 10:50:57</p> <p>7 really strategically working with each 10:51:02</p> <p>8 other and the lender group, but certainly 10:51:05</p> <p>9 Bob when he was there and then Burt were 10:51:12</p> <p>10 involved and understanding and helping the 10:51:15</p> <p>11 team, you know -- you know, navigate kind 10:51:19</p> <p>12 of the process. 10:51:24</p> <p>13 We had the consultants in from 10:51:25</p> <p>14 the bank gathering all kinds of 10:51:29</p> <p>15 information on forecasting and what have 10:51:31</p> <p>16 you. We had the investor group from the 10:51:33</p> <p>17 company that was hired by the company -- 10:51:35</p> <p>18 really Code Hennessy picked them and 10:51:37</p> <p>19 then -- engaged them to be the company 10:51:40</p> <p>20 through the company. It was really kind 10:51:42</p> <p>21 of Code/Apollo driving the bus as far 10:51:44</p> <p>22 where we would go with this. 10:51:47</p> <p>23 Now, that is my impression. 10:51:49</p> <p>24 Quite frankly Burt and Bob certainly had 10:51:51</p> <p>25 input, involvement and I did and others, 10:51:53</p>

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<p style="text-align: right;">98</p> <p>1 CUTRONE</p> <p>2 handling whatever he was handling. I 11:21:32</p> <p>3 anticipated a transition period to Scott, 11:21:34</p> <p>4 and I didn't know what Scott, Burt and the 11:21:37</p> <p>5 board had agreed would be Burt's 11:21:40</p> <p>6 responsibilities going forward, and it was 11:21:42</p> <p>7 not necessarily relevant to me. 11:21:44</p> <p>8 Q. Do you know if Mr. Fried had any 11:21:47</p> <p>9 direct reports while Mr. State was CEO? 11:21:53</p> <p>10 A. I don't know. 11:21:55</p> <p>11 Q. Do you know if he delegated work 11:22:03</p> <p>12 to anybody? 11:22:06</p> <p>13 MS. SELTZER: Objection. 11:22:08</p> <p>14 Q. I am sorry. Do you know if Mr. 11:22:09</p> <p>15 Fried delegated work to anybody while Mr. 11:22:11</p> <p>16 State was CEO? 11:22:13</p> <p>17 MS. SELTZER: I object to the 11:22:15</p> <p>18 form, but you can answer. 11:22:16</p> <p>19 A. I don't know. 11:22:17</p> <p>20 Q. Now, after Mr. State started 11:22:18</p> <p>21 working at LVI Services, do you have any 11:22:30</p> <p>22 personal knowledge of Mr. Fried's work 11:22:34</p> <p>23 performance? 11:22:37</p> <p>24 A. No. 11:22:37</p> <p>25 MR. DATOO: 46. 11:23:13</p>	<p style="text-align: right;">100</p> <p>1 CUTRONE</p> <p>2 means famous. Infamous has actually a 11:24:45</p> <p>3 negative connotation which -- if I know 11:24:48</p> <p>4 the English language, which I have been 11:24:52</p> <p>5 accused of not knowing. 11:24:54</p> <p>6 Q. Well, would you -- well, did you 11:24:55</p> <p>7 agree with the term infamous or would you 11:24:57</p> <p>8 agree with the term famous? 11:24:59</p> <p>9 A. I would -- famous. Infamous -- 11:25:01</p> <p>10 somebody is infamous for a bad reason. If 11:25:03</p> <p>11 you are known in this industry, you're 11:25:07</p> <p>12 well known in a good way, not in a bad 11:25:10</p> <p>13 way. 11:25:13</p> <p>14 Q. Okay. Did you believe that Mr. 11:25:13</p> <p>15 Fried would be a supportive chairman? 11:25:19</p> <p>16 A. Yeah. Yes. 11:25:21</p> <p>17 Q. Okay. Is that because he was 11:25:27</p> <p>18 supportive of Mr. McNamara? 11:25:31</p> <p>19 MS. SELTZER: Objection. 11:25:33</p> <p>20 A. Just my evaluation of Burt like, 11:25:34</p> <p>21 you know, he was -- he wanted what was 11:25:39</p> <p>22 best for the company. So if he was 11:25:43</p> <p>23 involved with the company, you know, he 11:25:46</p> <p>24 would always be having -- in my mind have 11:25:48</p> <p>25 the objective of doing something that is 11:25:52</p>
<p style="text-align: right;">99</p> <p>1 CUTRONE</p> <p>2 (Plaintiff's Exhibit 46 marked 11:23:16</p> <p>3 for identification.) 11:23:16</p> <p>4 (Document handed to witness.) 11:23:18</p> <p>5 Q. Mr. Cutrone, you have in front 11:23:18</p> <p>6 of a document that has been marked 11:23:20</p> <p>7 Plaintiff's Exhibit 46. 11:23:22</p> <p>8 Can you take a look at the 11:23:24</p> <p>9 document and let me know if you've seen it 11:23:24</p> <p>10 before? 11:23:26</p> <p>11 A. Yes. Okay. 11:23:27</p> <p>12 MS. SELTZER: This is 46. 11:24:04</p> <p>13 Q. 46. Do you see on the first 11:24:06</p> <p>14 page an e-mail written by John Leonard to 11:24:07</p> <p>15 yourself with a copy to Mr. Fried and Mr. 11:24:12</p> <p>16 Leonard dated September 21, 210? 11:24:15</p> <p>17 A. Uh-huh. 11:24:18</p> <p>18 Q. Do you agree with Mr. Leonard's 11:24:19</p> <p>19 comments in which he wrote: "You are 11:24:27</p> <p>20 infamous in the little 13 billion dollar 11:24:28</p> <p>21 market"? 11:24:32</p> <p>22 A. Well, I responded by saying very 11:24:36</p> <p>23 well said and completely true, so that is 11:24:37</p> <p>24 a good indication that I agreed. Although 11:24:39</p> <p>25 I think he used the term infamous, but he 11:24:42</p>	<p style="text-align: right;">101</p> <p>1 CUTRONE</p> <p>2 good for the company. 11:25:53</p> <p>3 Q. Now, after Mr. State started 11:25:54</p> <p>4 working at LVI Services, did there come a 11:25:59</p> <p>5 time when Mr. State began transitioning 11:26:02</p> <p>6 Mr. Fried's job duties to other employees? 11:26:04</p> <p>7 A. Yes, obviously. Yes. 11:26:06</p> <p>8 Q. And how do you know that? 11:26:14</p> <p>9 A. By what was occurring. There 11:26:16</p> <p>10 was the appointment of Greg DiCarlo as 11:26:29</p> <p>11 general counsel. There was nothing more 11:26:31</p> <p>12 formal than that. You know my role was 11:26:35</p> <p>13 still my role. I reported to him, and -- 11:26:38</p> <p>14 but at some point I was aware that there 11:26:41</p> <p>15 was a set of responsibilities that Burt 11:26:44</p> <p>16 had outlined and then Scott looked to 11:26:46</p> <p>17 delegate to others in the organization as 11:26:50</p> <p>18 opposed to them being performed by the 11:26:52</p> <p>19 chairman. 11:26:55</p> <p>20 Q. Okay. And do you know what 11:26:55</p> <p>21 duties Mr. State wanted to delegate to 11:26:57</p> <p>22 others? 11:27:00</p> <p>23 A. Of what -- of that list? 11:27:00</p> <p>24 Q. Yes -- 11:27:04</p> <p>25 A. That I referred to? 11:27:04</p>

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<p style="text-align: right;">126</p> <p>1 CUTRONE</p> <p>2 tell you what happened and, you know, 11:54:26</p> <p>3 let's just let it play out, but let's 11:54:28</p> <p>4 focus on what we have to do. 11:54:30</p> <p>5 Q. Now, did you ever have a 11:54:31</p> <p>6 conversation with Mr. State about Mr. 11:54:45</p> <p>7 Fried's job duties or his role at LVI 11:54:47</p> <p>8 other than what you just testified to? 11:54:49</p> <p>9 A. Not that I recall. 11:54:51</p> <p>10 Q. Did you ever have a conversation 11:54:54</p> <p>11 with anybody about Mr. Fried's job duties 11:54:55</p> <p>12 or his role at LVI other than what you 11:54:58</p> <p>13 just testified to? 11:55:00</p> <p>14 MS. SELTZER: I object to the 11:55:03</p> <p>15 form. The meeting in LVI, outside LVI? 11:55:03</p> <p>16 MR. DATOO: Anybody. 11:55:06</p> <p>17 MS. SELTZER: His wife, his -- 11:55:07</p> <p>18 MR. DATOO: Anybody. 11:55:09</p> <p>19 A. Well, certain things I share 11:55:10</p> <p>20 with my wife. Now, kind of the ongoing 11:55:12</p> <p>21 things, really the only other person that 11:55:16</p> <p>22 I have in any way been conversant at all 11:55:18</p> <p>23 with would be John, John Leonard, and to a 11:55:21</p> <p>24 lesser extent Kamal and Joseph. You know, 11:55:24</p> <p>25 the three of us worked -- the four of us 11:55:27</p>	<p style="text-align: right;">128</p> <p>1 CUTRONE</p> <p>2 there is nothing for us to do. It is of 11:56:25</p> <p>3 no relevance to us other than the company 11:56:29</p> <p>4 has to defend a very significant lawsuit, 11:56:31</p> <p>5 and we have got jobs to do. Se we just go 11:56:34</p> <p>6 back to work. 11:56:36</p> <p>7 Q. And does the same thing apply 11:56:36</p> <p>8 for conversations with Mr. Annarumma or 11:56:38</p> <p>9 Mr. Sookram? 11:56:41</p> <p>10 A. Yes. 11:56:42</p> <p>11 Q. Did you ever take any notes of 11:56:42</p> <p>12 your conversations with these three 11:56:43</p> <p>13 individuals? 11:56:45</p> <p>14 A. No. 11:56:45</p> <p>15 Q. Did you take any notes regarding 11:56:45</p> <p>16 a conversation you had about Mr. Fried 11:56:47</p> <p>17 during your Denver meeting? 11:56:49</p> <p>18 A. No. 11:56:51</p> <p>19 Q. Did you ever have a conversation 11:56:51</p> <p>20 with Mr. State about whether there was 11:57:01</p> <p>21 uncertainty concerning employees -- who 11:57:04</p> <p>22 employees should be reporting to between 11:57:06</p> <p>23 Mr. State and Mr. Fried? 11:57:08</p> <p>24 A. Say -- rephrase -- say that 11:57:10</p> <p>25 again, please. 11:57:13</p>
<p style="text-align: right;">127</p> <p>1 CUTRONE</p> <p>2 have been working together for 20 years. 11:55:30</p> <p>3 It has come up in conversation what is 11:55:32</p> <p>4 going on shoulder to shoulder huddled up 11:55:36</p> <p>5 with each other, and, you know, we are a 11:55:36</p> <p>6 little befuddled by it too, but we try not 11:55:39</p> <p>7 to let it be a distraction. 11:55:43</p> <p>8 Q. So what did you discuss with Mr. 11:55:45</p> <p>9 Leonard about Mr. Fried's job duties or 11:55:46</p> <p>10 his role at LVI? 11:55:48</p> <p>11 A. I -- I didn't really. My point 11:55:52</p> <p>12 is usually we talk about the fact that we 11:55:54</p> <p>13 have this ongoing battle, but I didn't 11:55:57</p> <p>14 talk about the job duties per se. I think 11:55:59</p> <p>15 he was probably aware like I was aware 11:56:02</p> <p>16 that there was a list, and there was a 11:56:04</p> <p>17 list of duties, and Scott wanted to assign 11:56:06</p> <p>18 them out, and Burt didn't want to, and 11:56:08</p> <p>19 that started their friction, and he 11:56:09</p> <p>20 wondered about how much longer are we 11:56:11</p> <p>21 going to do this. That is the extent of 11:56:14</p> <p>22 it. After that it was just more of, you 11:56:15</p> <p>23 know, when are you being deposed, that 11:56:18</p> <p>24 kind of thing, not -- there has not really 11:56:20</p> <p>25 been a lot of dialogue about it because 11:56:22</p>	<p style="text-align: right;">129</p> <p>1 CUTRONE</p> <p>2 Q. Did you ever have a conversation 11:57:14</p> <p>3 with Mr. State about any uncertainty with 11:57:15</p> <p>4 LVI employees as to who they should be 11:57:19</p> <p>5 reporting to between state and Mr. Fried? 11:57:22</p> <p>6 MS. SELTZER: I object to the 11:57:27</p> <p>7 form, but you can answer. 11:57:28</p> <p>8 A. I would say no because I am not 11:57:29</p> <p>9 aware that there was any uncertainty of 11:57:30</p> <p>10 what it is Scott wanted. Obviously there 11:57:33</p> <p>11 must be have been uncertainty between him 11:57:37</p> <p>12 and Burt, but I am not aware of 11:57:39</p> <p>13 any -- there was never any discussion with 11:57:41</p> <p>14 me about that uncertainty. 11:57:42</p> <p>15 Q. Do you know if there was any 11:57:44</p> <p>16 uncertainty amongst the employees as to 11:57:45</p> <p>17 who they should be reporting to for 11:57:48</p> <p>18 certain things? 11:57:50</p> <p>19 A. No. Like post -- like when 11:57:51</p> <p>20 Scott came aboard? 11:57:53</p> <p>21 Q. Yes. 11:57:54</p> <p>22 A. No, I think Scott made it pretty 11:57:55</p> <p>23 clear very candidly, very directly, very 11:57:56</p> <p>24 logically, and we subscribed to it and 11:57:59</p> <p>25 went forward day one. 11:58:02</p>

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<p>1 CUTRONE</p> <p>2 didn't have an opinion or anything on it 12:13:34</p> <p>3 because we didn't -- we didn't know 12:13:37</p> <p>4 anything about it. We just found out 12:13:39</p> <p>5 secondhand that this is the road it has 12:13:41</p> <p>6 taken. 12:13:43</p> <p>7 Q. Okay. Did you ever -- 12:13:44</p> <p>8 A. Let me just put this on silent. 12:14:35</p> <p>9 Q. Did you ever see a letter from 12:14:37</p> <p>10 Mr. Fried's attorneys? 12:14:41</p> <p>11 A. A letter -- yes. 12:14:44</p> <p>12 Q. Do you recall when you first saw 12:14:46</p> <p>13 that letter? 12:14:47</p> <p>14 A. No. 12:14:48</p> <p>15 Q. How did you come to see the 12:14:52</p> <p>16 letter? 12:14:53</p> <p>17 A. It was e-mailed to me by Scott, 12:14:53</p> <p>18 and the original ultimately was with me. 12:15:01</p> <p>19 I have -- I have the original letter 12:15:08</p> <p>20 because it was addressed to Scott at 80 12:15:10</p> <p>21 Broad Street. 12:15:13</p> <p>22 Q. How did you -- I'm sorry. 12:15:14</p> <p>23 A. I just wanted to say it was 12:15:17</p> <p>24 delivered to 80 Broad Street. 12:15:19</p> <p>25 Q. So how did you come to be in 12:15:21</p>	<p>1 CUTRONE</p> <p>2 letter? 12:16:18</p> <p>3 THE VIDEOGRAPHER: We're going 12:16:19</p> <p>4 off the record, 12:16 p.m. 12:16:20</p> <p>5 (Recess taken.) 12:16:22</p> <p>6 THE VIDEOGRAPHER: We're 12:23:28</p> <p>7 returning to the record, 12:23 p.m. 12:23:28</p> <p>8 Q. Mr. Cutrone, you have in front 12:23:31</p> <p>9 of you a document that has been previously 12:23:32</p> <p>10 marked as Plaintiff's Exhibit 8. It is a 12:23:34</p> <p>11 document Bates stamped B Simmons 44 12:23:37</p> <p>12 through B Simmons 49. 12:23:45</p> <p>13 Can you please take a look at 12:23:54</p> <p>14 this document and let me know if you have 12:23:55</p> <p>15 seen it before? 12:23:58</p> <p>16 A. Yes, I have. 12:23:59</p> <p>17 Q. Is this the letter from Mr. 12:24:00</p> <p>18 Fried -- Fried's attorneys that you 12:24:06</p> <p>19 mentioned earlier? 12:24:10</p> <p>20 MS. SELTZER: Do you mean the 12:24:14</p> <p>21 attachment? 12:24:15</p> <p>22 Q. Yes, the attachment. Not the 12:24:15</p> <p>23 cover. 12:24:17</p> <p>24 A. Yes, this is the letter I 12:24:17</p> <p>25 recall. Yes. 12:24:19</p>
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<p>1 CUTRONE</p> <p>2 possession of that letter? 12:15:22</p> <p>3 A. At some point I asked Scott if 12:15:23</p> <p>4 he wanted me to open it or send it to him, 12:15:26</p> <p>5 and he asked me -- you know, I don't 12:15:29</p> <p>6 recall. He might have probably said open 12:15:32</p> <p>7 it because I wouldn't have opened it if he 12:15:33</p> <p>8 didn't agree to it, but I think I already 12:15:36</p> <p>9 knew it was coming because I think, you 12:15:38</p> <p>10 know, going back to the conversation I 12:15:40</p> <p>11 think at some point Scott said to me, you 12:15:43</p> <p>12 know, I think he is going to file suit or 12:15:46</p> <p>13 something, you know, that -- so I didn't 12:15:49</p> <p>14 think the letter was necessarily an 12:15:52</p> <p>15 ultimate surprise because it obviously 12:15:56</p> <p>16 wasn't moving forward productively the 12:15:59</p> <p>17 other way. I don't know what was going on 12:16:03</p> <p>18 between the conversation -- in 12:16:05</p> <p>19 conversations between Burt and the board 12:16:06</p> <p>20 and Scott. But it -- you know, at some 12:16:08</p> <p>21 point I got the letter. 12:16:11</p> <p>22 Q. Okay. 12:16:12</p> <p>23 MR. DATOO: Can we take a short 12:16:14</p> <p>24 break? 12:16:16</p> <p>25 MS. SELTZER: Got to find the 12:16:17</p>	<p>1 CUTRONE</p> <p>2 Q. Okay. Now, if you look at 12:24:19</p> <p>3 the -- did you read -- did you receive 12:24:29</p> <p>4 this letter on November 15, 2010? 12:24:32</p> <p>5 A. I don't know. I think it was 12:24:35</p> <p>6 received at the office because it 12:24:40</p> <p>7 was -- it says via hand delivery addressed 12:24:44</p> <p>8 to Scott State. And so if that is true, 12:24:46</p> <p>9 it probably hit our office on November 15. 12:24:49</p> <p>10 Q. Okay. Do you -- 12:24:52</p> <p>11 A. I -- 12:24:54</p> <p>12 Q. Go ahead. 12:24:55</p> <p>13 A. I sent the e-mail to Scott on 12:24:56</p> <p>14 the 16th. 12:24:58</p> <p>15 Q. And do you recall when this 12:25:03</p> <p>16 letter was delivered to you? 12:25:04</p> <p>17 A. No. 12:25:05</p> <p>18 Q. Okay. 12:25:05</p> <p>19 MS. SELTZER: I object to the 12:25:06</p> <p>20 form. He didn't testify it was delivered 12:25:07</p> <p>21 to him specifically. 12:25:10</p> <p>22 MR. DATOO: I'm sorry? 12:25:11</p> <p>23 MS. SELTZER: I said he didn't 12:25:12</p> <p>24 testify it was delivered to him. 12:25:13</p> <p>25 Q. Well, at some point -- at some 12:25:15</p>

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<p>1 CUTRONE</p> <p>2 board meeting, did you have any 12:28:31</p> <p>3 discussions -- other than what -- sorry. 12:28:32</p> <p>4 Let me back up. 12:28:36</p> <p>5 Other than what you have 12:28:37</p> <p>6 testified to after the November 4 board 12:28:38</p> <p>7 meeting, did you have any discussions with 12:28:41</p> <p>8 anyone about Mr. Fried's job duties or his 12:28:42</p> <p>9 role at LVI? 12:28:45</p> <p>10 MS. SELTZER: Objection. Asked 12:28:47</p> <p>11 and answered. You can answer again. 12:28:48</p> <p>12 A. No. 12:28:50</p> <p>13 Q. Okay. Do you know why Mr. Fried 12:28:51</p> <p>14 was terminated? 12:28:56</p> <p>15 A. Specifically, no. 12:28:57</p> <p>16 Q. How about generally? 12:29:01</p> <p>17 A. My understanding is that 12:29:02</p> <p>18 the -- they could not come to terms on the 12:29:08</p> <p>19 offer of compensation and responsibilities 12:29:12</p> <p>20 going forward. There was an offer. He 12:29:15</p> <p>21 didn't accept, and therefore his 12:29:19</p> <p>22 termination -- his employment ceases. 12:29:23</p> <p>23 Q. And how did you come to learn 12:29:25</p> <p>24 that? 12:29:26</p> <p>25 A. I couldn't recall. It was 12:29:26</p>	<p>1 CUTRONE</p> <p>2 of the e-mail was? 12:30:16</p> <p>3 A. Something about I understand I 12:30:17</p> <p>4 am going to get a package, and I think I 12:30:19</p> <p>5 referred him to Kamal because I wouldn't 12:30:21</p> <p>6 normally deliver that. 12:30:23</p> <p>7 Q. Do you know if that was before 12:30:24</p> <p>8 or after Mr. Fried was terminated? 12:30:26</p> <p>9 A. I don't know. 12:30:28</p> <p>10 Q. Okay. 12:30:29</p> <p>11 A. But there is an e-mail to that 12:30:30</p> <p>12 effect, so -- 12:30:32</p> <p>13 Q. Okay. Are you familiar with 12:30:33</p> <p>14 Shari Dembin? 12:30:35</p> <p>15 A. Yes. 12:30:36</p> <p>16 Q. How so? 12:30:36</p> <p>17 A. She -- I've known Shari since 12:30:37</p> <p>18 she was sixteen years old. 12:30:43</p> <p>19 Q. And was she employed by LVI 12:30:45</p> <p>20 Services? 12:30:51</p> <p>21 A. Yes. 12:30:51</p> <p>22 Q. Do you know how long? 12:30:51</p> <p>23 A. At least ten years, probably 12:30:52</p> <p>24 fifteen. 12:30:56</p> <p>25 Q. And which office did she work 12:30:57</p>
147	149
<p>1 CUTRONE</p> <p>2 either through conversation with Scott 12:29:27</p> <p>3 or -- it probably would have been talking 12:29:30</p> <p>4 with Scott. 12:29:32</p> <p>5 Q. Do you recall when that 12:29:33</p> <p>6 conversation took place? 12:29:33</p> <p>7 A. No. 12:29:34</p> <p>8 Q. Was it before or after Mr. Fried 12:29:35</p> <p>9 was terminated? 12:29:36</p> <p>10 A. I don't know. Assuming there 12:29:37</p> <p>11 was a conversation, I am just saying who 12:29:40</p> <p>12 else would I have heard from. Either 12:29:42</p> <p>13 Scott or Kamal are the only two people I 12:29:44</p> <p>14 would have -- that would shared that fact 12:29:47</p> <p>15 with me. It might have -- you know, I 12:29:49</p> <p>16 recall an e-mail from Burt about a 12:29:54</p> <p>17 severance package -- a severance package 12:29:59</p> <p>18 or a termination package, and I want to 12:30:03</p> <p>19 say he wrote to me -- I don't think that 12:30:06</p> <p>20 was the first time I heard. It could have 12:30:08</p> <p>21 been. It could have been from Burt 12:30:10</p> <p>22 himself. 12:30:12</p> <p>23 Q. Do you recall when that was? 12:30:12</p> <p>24 A. Offhand, no. 12:30:13</p> <p>25 Q. Do you recall what the substance 12:30:14</p>	<p>1 CUTRONE</p> <p>2 in? 12:31:00</p> <p>3 A. Originally she worked out of the 12:31:00</p> <p>4 corporate office at 80 Broad Street and/or 12:31:03</p> <p>5 470 Park when it was there, where ever the 12:31:08</p> <p>6 corporate office was. 12:31:12</p> <p>7 Q. And how about later on? 12:31:13</p> <p>8 A. At some point she relocated to 12:31:14</p> <p>9 the Westport office. 12:31:17</p> <p>10 Q. And did you know if she is 12:31:18</p> <p>11 related to Mr. Fried? 12:31:20</p> <p>12 A. It is his daughter. 12:31:21</p> <p>13 Q. And when did you find that out? 12:31:22</p> <p>14 A. Probably the day I met her. 12:31:25</p> <p>15 Q. And do you know what 12:31:28</p> <p>16 Ms. Dembin's job title was? 12:31:32</p> <p>17 A. In -- I believe it was insurance 12:31:34</p> <p>18 and bonding administrator. 12:31:36</p> <p>19 Q. And do you know what her job 12:31:38</p> <p>20 duties were? 12:31:40</p> <p>21 A. Generally but she didn't report 12:31:40</p> <p>22 to me. 12:31:46</p> <p>23 Q. Can you tell me what her job 12:31:46</p> <p>24 duties were generally? 12:31:48</p> <p>25 A. She administered insurance and 12:31:49</p>

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<p style="text-align: right;">150</p> <p>1 CUTRONE</p> <p>2 bonding. So all the company's insurance 12:31:50</p> <p>3 certs, you know, when we -- when we start 12:31:53</p> <p>4 a project we have to provide our client an 12:31:57</p> <p>5 insurance certificate to evidence our 12:32:01</p> <p>6 insurance. So she was the point person. 12:32:02</p> <p>7 So all of the requests for insurance certs 12:32:06</p> <p>8 came through to her, and she was the 12:32:09</p> <p>9 clearinghouse with our -- to issue those 12:32:10</p> <p>10 certs. We could issue a lot of them 12:32:13</p> <p>11 in-house, and sometimes we had to go to 12:32:15</p> <p>12 the broker for a special cert. So she was 12:32:18</p> <p>13 -- everything routed through her in that 12:32:21</p> <p>14 respect. She issued certs. 12:32:24</p> <p>15 Q. What do you mean by certs? 12:32:26</p> <p>16 A. Insurance certificates. 12:32:28</p> <p>17 Certificates of insurance evidencing the 12:32:29</p> <p>18 company's insurance on behalf of the owner 12:32:31</p> <p>19 on a project. So every project you have 12:32:33</p> <p>20 to give them a certificate of insurance, 12:32:35</p> <p>21 so they could see what our -- A, they are 12:32:37</p> <p>22 named as the certificate holder and 12:32:40</p> <p>23 we -- it provides notice as to the limits 12:32:43</p> <p>24 that the company has, policy limits. 12:32:44</p> <p>25 Q. Do you know how much money she 12:32:46</p>	<p style="text-align: right;">152</p> <p>1 CUTRONE</p> <p>2 Q. And do you know how long she had 12:33:43</p> <p>3 this role for? 12:33:44</p> <p>4 A. Several years. 12:33:45</p> <p>5 Q. What do you mean by several? 12:33:47</p> <p>6 A. Probably at least five. 12:33:49</p> <p>7 Q. Okay. And do you know what her 12:33:52</p> <p>8 job title was prior or her role was prior? 12:33:56</p> <p>9 A. She started off primarily as 12:34:01</p> <p>10 Burt's administrative assistant, and then 12:34:05</p> <p>11 she took on different roles and 12:34:09</p> <p>12 responsibilities over the course of the 12:34:10</p> <p>13 years, insurance bonding, administration. 12:34:12</p> <p>14 She also was involved with the travel 12:34:17</p> <p>15 program and the promotions, if we -- if a 12:34:21</p> <p>16 branch office was going to order T-shirts 12:34:27</p> <p>17 or hats. So she was -- things like that, 12:34:29</p> <p>18 so she was -- she would organize and 12:34:31</p> <p>19 receive and place orders for that on 12:34:33</p> <p>20 behalf of the branches. So LA would say I 12:34:36</p> <p>21 need this, that, the other thing, and she 12:34:39</p> <p>22 would secure them. So she was like the 12:34:41</p> <p>23 one purchase agent, if you will, for the 12:34:43</p> <p>24 company for promotional items, and she 12:34:45</p> <p>25 also assisted quite adeptly in organizing 12:34:48</p>
<p style="text-align: right;">151</p> <p>1 CUTRONE</p> <p>2 made? 12:32:48</p> <p>3 A. Yes. I -- offhand I think it 12:32:48</p> <p>4 was 85,000 a year. 12:32:52</p> <p>5 Q. Okay. 12:32:54</p> <p>6 A. In that range. 12:32:56</p> <p>7 Q. Do you know if she was 12:32:56</p> <p>8 responsible for reviewing and processing 12:32:59</p> <p>9 insurance requests from LVI's other 12:33:01</p> <p>10 offices? 12:33:05</p> <p>11 A. That is what I just described. 12:33:05</p> <p>12 Q. Okay. And was she responsible 12:33:07</p> <p>13 for reviewing -- do you know if she was 12:33:09</p> <p>14 responsible for reviewing bid and bond 12:33:12</p> <p>15 requests before the requests were sent to 12:33:14</p> <p>16 a surety? 12:33:16</p> <p>17 A. Yes. Again, she had a similar 12:33:18</p> <p>18 function in my understanding that all bid 12:33:20</p> <p>19 bond requests and all bond requests also 12:33:23</p> <p>20 came through Shari. She received them and 12:33:25</p> <p>21 any information necessary for the company 12:33:28</p> <p>22 to -- to actually then order the bid bonds 12:33:31</p> <p>23 or payment performance bonds from the 12:33:35</p> <p>24 surety. So, yes, she was the -- the 12:33:38</p> <p>25 person that routed them through. 12:33:41</p>	<p style="text-align: right;">153</p> <p>1 CUTRONE</p> <p>2 any company functions. So the holiday 12:34:53</p> <p>3 party at Rosini's, management meetings off 12:34:56</p> <p>4 site, she would be coordinating with 12:34:59</p> <p>5 Burt's direction on, you know, sites, 12:35:03</p> <p>6 location and making arrangements for the 12:35:06</p> <p>7 rooms and et cetera, et cetera for -- for 12:35:08</p> <p>8 a management meeting of, you know, 12:35:10</p> <p>9 sometimes 20, sometimes 60 people at -- at 12:35:12</p> <p>10 an event or at a resort setting or 12:35:15</p> <p>11 whatever, you know. 12:35:17</p> <p>12 Q. And did she continue to perform 12:35:18</p> <p>13 those job duties when she was I guess 12:35:20</p> <p>14 responsible for insurance and bonding? 12:35:25</p> <p>15 A. Yeah. There were much fewer and 12:35:26</p> <p>16 far in between in the last five years, but 12:35:31</p> <p>17 to the extent we had them, you know, she 12:35:34</p> <p>18 would. Yes. 12:35:36</p> <p>19 Q. And would you consider when she 12:35:36</p> <p>20 became responsible for insurance and 12:35:39</p> <p>21 bonding a promotion? 12:35:42</p> <p>22 MS. SELTZER: I object to form, 12:35:45</p> <p>23 but you can answer if you know. 12:35:46</p> <p>24 A. You know, not formally. I mean 12:35:48</p> <p>25 she was given salary increases over time 12:35:50</p>

<p style="text-align: right;">154</p> <p>1 CUTRONE</p> <p>2 and -- but I wouldn't say it was 12:35:53</p> <p>3 promotion. You know, administrative -- it 12:35:57</p> <p>4 is an administrative position either way. 12:35:59</p> <p>5 So administrating bonding insurance or 12:36:01</p> <p>6 administrating for an executive. So -- 12:36:04</p> <p>7 Q. Do you know who gave her or 12:36:09</p> <p>8 assigned her those responsibilities? 12:36:13</p> <p>9 A. With regards to bonding and 12:36:14</p> <p>10 insurance, let me step back. Five plus 12:36:17</p> <p>11 years ago, Joseph Annarumma took over as 12:36:22</p> <p>12 primary manager over insurance bonding on 12:36:25</p> <p>13 the administration of insurance and 12:36:29</p> <p>14 bonding. Joseph was procuring and 12:36:32</p> <p>15 negotiating -- procuring quotes for 12:36:36</p> <p>16 insurance for annual renewals and things 12:36:38</p> <p>17 of that nature and Shari administered the 12:36:40</p> <p>18 certificate program, you know, issuance of 12:36:42</p> <p>19 certificates. Bonding administration was 12:36:47</p> <p>20 really kind of always with Burt, you know, 12:36:50</p> <p>21 that -- all bid bonds, the review of that, 12:36:52</p> <p>22 it is all about contractual review because 12:36:55</p> <p>23 you are going to give the bonding company 12:36:57</p> <p>24 -- you want to make sure it's got good 12:36:58</p> <p>25 scope and terms and conditions that were 12:37:02</p>	<p style="text-align: right;">156</p> <p>1 CUTRONE</p> <p>2 policies. Joseph managed our policies for 12:37:58</p> <p>3 workers comp, general liability, et 12:38:00</p> <p>4 cetera. So he was the manager on the 12:38:02</p> <p>5 insurance side, and Burt was the manager 12:38:04</p> <p>6 on bonding side, and she administered the 12:38:06</p> <p>7 function necessary for both those 12:38:09</p> <p>8 managers. That is how I understood it. 12:38:11</p> <p>9 Q. Do you know who assigned her 12:38:12</p> <p>10 those job duties? 12:38:14</p> <p>11 A. I think Burt and Joseph -- 12:38:15</p> <p>12 Q. Okay. 12:38:21</p> <p>13 A. -- you know, going back now five 12:38:22</p> <p>14 plus years ago. 12:38:24</p> <p>15 Q. Right. And do you know what her 12:38:25</p> <p>16 work performance was like? 12:38:26</p> <p>17 A. Not directly but, you know, she 12:38:28</p> <p>18 didn't report to me. 12:38:33</p> <p>19 Q. Okay. How about indirectly? Do 12:38:34</p> <p>20 you know what her work performance was 12:38:37</p> <p>21 like? 12:38:39</p> <p>22 A. It was fine. 12:38:39</p> <p>23 Q. Okay. Now, did you consider her 12:38:41</p> <p>24 job duties as noncritical administrative 12:38:45</p> <p>25 duties? 12:38:49</p>
<p style="text-align: right;">155</p> <p>1 CUTRONE</p> <p>2 acceptable, and Burt would review those 12:37:04</p> <p>3 provisions prior to ordering it. So Shari 12:37:07</p> <p>4 wouldn't -- Shari might tab the page here 12:37:09</p> <p>5 is the different provisions, but Burt was 12:37:12</p> <p>6 I believe -- because Burt was the one that 12:37:13</p> <p>7 would review that specifically and say, 12:37:16</p> <p>8 yes, go ahead and send it. 12:37:17</p> <p>9 So Shari administered the 12:37:19</p> <p>10 bonding program through -- you know, with 12:37:21</p> <p>11 Burt because she received in the bid 12:37:23</p> <p>12 bonds, logged them, tabbed them, gave them 12:37:28</p> <p>13 to Burt. He would clear them. She would 12:37:30</p> <p>14 send them to the bonding company to get 12:37:33</p> <p>15 bid bonds. She would get the bid bonds, 12:37:35</p> <p>16 log them in, and get them to the branch, 12:37:42</p> <p>17 and she would administer that function 12:37:42</p> <p>18 under Burt's direction on the bonding 12:37:43</p> <p>19 side. On the insurance side also under 12:37:43</p> <p>20 Joseph's direction but she had it down. 12:37:46</p> <p>21 She didn't -- it was a very 12:37:47</p> <p>22 straightforward process, but if there was 12:37:49</p> <p>23 a unique insurance requirement, then she 12:37:50</p> <p>24 would go to Joseph if something was unique 12:37:52</p> <p>25 or different because Joseph knew our 12:37:56</p>	<p style="text-align: right;">157</p> <p>1 CUTRONE</p> <p>2 MS. SELTZER: I object to the 12:38:50</p> <p>3 form. 12:38:51</p> <p>4 A. Did I consider them noncritical. 12:38:51</p> <p>5 What do you mean by critical? I considered 12:38:55</p> <p>6 them administrative. 12:38:58</p> <p>7 Q. Do you -- could her job duties 12:39:00</p> <p>8 have been performed by a secretary? 12:39:06</p> <p>9 A. Her job duties could be 12:39:08</p> <p>10 performed by any capable person paying 12:39:14</p> <p>11 attention. 12:39:16</p> <p>12 Q. Why do you -- why was she 12:39:17</p> <p>13 being -- how much do secretaries get paid? 12:39:19</p> <p>14 A. First we don't have any 12:39:22</p> <p>15 secretaries. We have administrative 12:39:25</p> <p>16 assistants, and there is no defined 12:39:30</p> <p>17 structure or salary. We pay for 12:39:31</p> <p>18 performance based upon what the manager's 12:39:33</p> <p>19 opinion is as to role and responsibility, 12:39:37</p> <p>20 and we compensate people accordingly. 12:39:40</p> <p>21 Q. What is your highest -- your 12:39:42</p> <p>22 current highest paid administrative 12:39:45</p> <p>23 assistant? 12:39:47</p> <p>24 A. In the corporate office? 12:39:48</p> <p>25 Q. Yes. 12:39:51</p>

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<p>1 CUTRONE</p> <p>2 A. 60. 12:39:52</p> <p>3 Q. Now, did there come a time when 12:39:55</p> <p>4 Ms. Dembin was terminated? 12:40:04</p> <p>5 A. Yes. 12:40:06</p> <p>6 Q. And do you recall when that was? 12:40:06</p> <p>7 A. Yes, early January. 12:40:08</p> <p>8 Q. Do you know why? 12:40:10</p> <p>9 A. Primarily because we were 12:40:11</p> <p>10 closing the Westport office. Actually 12:40:13</p> <p>11 specifically because we were closing the 12:40:18</p> <p>12 Westport office. 12:40:20</p> <p>13 Q. And was the closure of that 12:40:21</p> <p>14 office a part of a bigger layoff? 12:40:23</p> <p>15 A. Yes. 12:40:26</p> <p>16 Q. And how many people were laid 12:40:27</p> <p>17 off in total? 12:40:30</p> <p>18 A. There was a reduction in force 12:40:31</p> <p>19 of about at least a dozen people or about 12:40:33</p> <p>20 a dozen people. 12:40:39</p> <p>21 Q. And who made the decision to lay 12:40:42</p> <p>22 off? 12:40:47</p> <p>23 MS. SELTZER: Objection. 12:40:49</p> <p>24 Q. To lay off the 12 people. 12:40:50</p> <p>25 MS. SELTZER: I object to the 12:40:54</p>	<p>1 CUTRONE</p> <p>2 that -- of that talent, talent meaning the 12:41:48</p> <p>3 personnel, and evaluating where it was 12:41:50</p> <p>4 being effective and delivering a return, 12:41:53</p> <p>5 and so he evaluated many aspects of the 12:41:58</p> <p>6 business to -- collectively as a team. 12:42:01</p> <p>7 People were asked for their opinions. 12:42:04</p> <p>8 People gave their opinions, and at the end 12:42:06</p> <p>9 of the day I would say without any 12:42:09</p> <p>10 reservation that all the managers that 12:42:11</p> <p>11 participated on those calls were 12:42:13</p> <p>12 supporters of the reduction in force to 12:42:16</p> <p>13 the individual, and then we acted on it. 12:42:19</p> <p>14 Q. Including you? 12:42:23</p> <p>15 A. Yes. 12:42:25</p> <p>16 Q. And who made the final decision 12:42:25</p> <p>17 as to who was going to be laid off? 12:42:30</p> <p>18 MS. SELTZER: Objection. 12:42:34</p> <p>19 A. I mean -- 12:42:36</p> <p>20 MS. SELTZER: I object to the 12:42:36</p> <p>21 form. 12:42:39</p> <p>22 MR. DATOO: What is -- what is 12:42:39</p> <p>23 wrong with the form? 12:42:39</p> <p>24 MS. SELTZER: Well, I mean 12:42:40</p> <p>25 first of all what do you mean by final 12:42:41</p>
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<p>1 CUTRONE</p> <p>2 form simply because it may not have been 12:40:55</p> <p>3 one person. Do you want for each person 12:40:57</p> <p>4 to -- 12:40:59</p> <p>5 MR. DATOO: That is why I said 12:41:00</p> <p>6 who. 12:41:01</p> <p>7 MS. SELTZER: Okay. 12:41:01</p> <p>8 A. Well, there was meetings amongst 12:41:02</p> <p>9 several senior managers, Scott, myself, 12:41:06</p> <p>10 John Leonard, the regional managers, Mark 12:41:09</p> <p>11 Canessa, regional managers being Aiello, 12:41:14</p> <p>12 Pearson, Anderson. I believe Greg DiCarlo 12:41:18</p> <p>13 might have been in those 12:41:22</p> <p>14 discussions -- that discussion as well. 12:41:24</p> <p>15 MS. SELTZER: Before I let him 12:41:26</p> <p>16 answer if there were any discussions with 12:41:27</p> <p>17 Greg DiCarlo that had any kind of legal 12:41:29</p> <p>18 component, you are not to testify about 12:41:32</p> <p>19 those, okay. 12:41:34</p> <p>20 A. No, it was -- it was about the 12:41:35</p> <p>21 reduction in force. 12:41:37</p> <p>22 MS. SELTZER: Okay. 12:41:38</p> <p>23 A. About, you know, Scott assessing 12:41:39</p> <p>24 the business, assessing the talent that 12:41:42</p> <p>25 the business has, the effectiveness of 12:41:46</p>	<p>1 CUTRONE</p> <p>2 decision? Secondly, you are assuming that 12:42:43</p> <p>3 there was one individual that made the 12:42:45</p> <p>4 final decision. 12:42:47</p> <p>5 MR. DATOO: I said who. I said 12:42:48</p> <p>6 -- I never said it could be one, two, 12:42:50</p> <p>7 three people. Who made the final 12:42:52</p> <p>8 decision. 12:42:54</p> <p>9 MS. SELTZER: You may answer. 12:42:55</p> <p>10 A. The way I see it is we agreed as 12:42:56</p> <p>11 a group. 12:42:58</p> <p>12 Q. Now, you testified that there 12:42:59</p> <p>13 was a series of meetings among senior 12:43:04</p> <p>14 managers regarding the layoff, correct? 12:43:06</p> <p>15 A. Uh-huh. 12:43:09</p> <p>16 Q. Do you recall when the meetings 12:43:10</p> <p>17 first began? 12:43:10</p> <p>18 A. No. 12:43:11</p> <p>19 Q. Do you know how long after Mr. 12:43:16</p> <p>20 State started working at LVI? 12:43:21</p> <p>21 A. Offhand, no. I think it was, 12:43:24</p> <p>22 you know, first -- first it was part of 12:43:30</p> <p>23 the budgeting process -- you know, the 12:43:33</p> <p>24 planning process for '11 was when 12:43:35</p> <p>25 the -- the conversations first started 12:43:39</p>

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<p style="text-align: right;">162</p> <p>1 CUTRONE</p> <p>2 about personnel and -- and roles and 12:43:40</p> <p>3 responsibilities and effectiveness or lack 12:43:45</p> <p>4 of effectiveness. So it was all part of 12:43:48</p> <p>5 that iterative process over those first 12:43:51</p> <p>6 couple of months. 12:43:54</p> <p>7 Q. And that process started in the 12:43:55</p> <p>8 first couple of months? 12:43:57</p> <p>9 A. Yes. 12:43:58</p> <p>10 Q. And do you know if it was in 12:43:59</p> <p>11 October, November? 12:44:03</p> <p>12 A. Like I said, Scott started, you 12:44:06</p> <p>13 know, effective October 1. September 24, 12:44:08</p> <p>14 we could take. And, you know, it wasn't 12:44:11</p> <p>15 the first order of business to go into. 12:44:14</p> <p>16 Okay. Let's go do layoffs. It was 12:44:16</p> <p>17 understanding the business, talking about 12:44:18</p> <p>18 who does what, roles or responsibilities, 12:44:20</p> <p>19 who is this guy, who is that guy, 12:44:22</p> <p>20 effectiveness. You know, he was 12:44:24</p> <p>21 counseling with his team as to what 12:44:26</p> <p>22 constitutes the talents. So that is what 12:44:29</p> <p>23 I said by iterative process. It started 12:44:32</p> <p>24 dialogue, dialogue, dialogue planning 12:44:36</p> <p>25 process, meet in Denver. I think it was 12:44:37</p>	<p style="text-align: right;">164</p> <p>1 CUTRONE</p> <p>2 A. Correct. 12:45:30</p> <p>3 Q. Okay. Now, prior to having the 12:45:31</p> <p>4 substantive talks, were there preliminary 12:45:41</p> <p>5 talks? 12:45:43</p> <p>6 MS. SELTZER: Objection. About 12:45:44</p> <p>7 the layoffs. 12:45:45</p> <p>8 Q. About the layoffs? 12:45:47</p> <p>9 A. There -- there were no 12:45:49</p> <p>10 preliminary talks about layoffs. There 12:45:51</p> <p>11 was discussions about people's 12:45:54</p> <p>12 effectiveness, talents, capabilities, who 12:45:58</p> <p>13 was responsible for what. It was about 12:46:00</p> <p>14 the lay of the land. There was no talk 12:46:04</p> <p>15 about layoffs early on. I think that came 12:46:05</p> <p>16 more of as we went through the planning 12:46:08</p> <p>17 process, and we saw, you know, business 12:46:11</p> <p>18 backlog and contributions for next year 12:46:13</p> <p>19 and who is going to bring in the work and 12:46:15</p> <p>20 everything. I think that really started 12:46:17</p> <p>21 to spur the okay, well, this guy is 12:46:20</p> <p>22 effective. Who does he report to. Who 12:46:24</p> <p>23 pays for him, that kind of thing. 12:46:27</p> <p>24 So it was very interesting and 12:46:28</p> <p>25 very -- it was a quality process quite 12:46:30</p>
<p style="text-align: right;">163</p> <p>1 CUTRONE</p> <p>2 not until after I would say -- when it 12:44:40</p> <p>3 comes to substantive talks about reduction 12:44:47</p> <p>4 in force, I believe that was more in 12:44:49</p> <p>5 earnest in December. 12:44:53</p> <p>6 Q. In when? 12:44:55</p> <p>7 A. In December. I don't think we 12:44:56</p> <p>8 got really into it -- maybe in November. 12:44:57</p> <p>9 Maybe in November. 12:45:00</p> <p>10 Q. What part of November? 12:45:01</p> <p>11 A. I don't recall. We would 12:45:03</p> <p>12 have -- we would have had dialogue about 12:45:04</p> <p>13 it in our Denver meeting, so I think -- I 12:45:06</p> <p>14 really think it started up in November and 12:45:12</p> <p>15 then, you know, into December. That is my 12:45:14</p> <p>16 recollection of the time frame. 12:45:17</p> <p>17 Q. And that Denver meeting happened 12:45:18</p> <p>18 after the November 4 board meeting? 12:45:19</p> <p>19 A. I believe so. 12:45:21</p> <p>20 Q. Well, Mr. State told you what 12:45:22</p> <p>21 happened at the board meeting in Denver, 12:45:24</p> <p>22 correct? 12:45:25</p> <p>23 A. Yes. 12:45:26</p> <p>24 Q. So obviously it happened 12:45:27</p> <p>25 afterwards, correct? 12:45:29</p>	<p style="text-align: right;">165</p> <p>1 CUTRONE</p> <p>2 frankly that I think really got the 12:46:33</p> <p>3 management team to think through 12:46:35</p> <p>4 capabilities, put longevity aside. Let's 12:46:38</p> <p>5 talk about capabilities and 12:46:43</p> <p>6 responsibilities, and out of that came 12:46:45</p> <p>7 ultimately the group decision on reduction 12:46:46</p> <p>8 in force. 12:46:50</p> <p>9 Q. At what point did you start 12:46:51</p> <p>10 discussing names? 12:46:53</p> <p>11 A. I don't recall. 12:46:54</p> <p>12 Q. Was it -- was that part of the 12:46:55</p> <p>13 substantive talks you referred to? 12:46:57</p> <p>14 A. Yes. 12:46:59</p> <p>15 Q. Okay. And that was towards the 12:47:00</p> <p>16 end of November, early December? 12:47:03</p> <p>17 A. I don't know, but it was in that 12:47:05</p> <p>18 time frame. It was November, December. 12:47:06</p> <p>19 We did the layoffs on January 7 I want to 12:47:09</p> <p>20 say. So we concluded on our decision, my 12:47:11</p> <p>21 recollection is we basically concluded 12:47:15</p> <p>22 prior to the holidays and then clearly 12:47:17</p> <p>23 decided to wait until after the holidays 12:47:18</p> <p>24 to make the announcement. So it -- you 12:47:20</p> <p>25 know, it could have started in Denver and 12:47:23</p>

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<p style="text-align: right;">166</p> <p>1 CUTRONE</p> <p>2 ended, you know, sometime in, you know, in 12:47:25</p> <p>3 Denver like mid-November and ended 12:47:29</p> <p>4 sometime in December, and I would say that 12:47:31</p> <p>5 is about -- the 30-day window is my memory 12:47:33</p> <p>6 for when that would have taken place. 12:47:39</p> <p>7 Q. Why was Ms. Dembin included in 12:47:41</p> <p>8 the layoff? 12:47:43</p> <p>9 A. Because we were closing the 12:47:44</p> <p>10 Westport office. 12:47:46</p> <p>11 Q. Could she have worked out of 12:47:47</p> <p>12 another office? 12:47:48</p> <p>13 A. Not effectively. It would have 12:47:49</p> <p>14 been -- 12:47:52</p> <p>15 Q. Why? 12:47:52</p> <p>16 A. It was simply -- her functions 12:47:53</p> <p>17 could be reassigned quite easily to 12:47:56</p> <p>18 personnel at 80 Broad Street. There was 12:47:58</p> <p>19 no need to have two corporate offices. 12:48:00</p> <p>20 Joseph worked out of New York. His staff 12:48:03</p> <p>21 was more than capable to perform the 12:48:05</p> <p>22 administrative functions on the insurance 12:48:08</p> <p>23 side. The general counsel, his paralegal 12:48:11</p> <p>24 could handle the administrative functions 12:48:13</p> <p>25 on the bonding side. So there was no need 12:48:16</p>	<p style="text-align: right;">168</p> <p>1 CUTRONE</p> <p>2 A. Good question. I don't know. 12:48:59</p> <p>3 Well, it would have been Gregg. 12:49:03</p> <p>4 Q. And where was Greg? Where was 12:49:07</p> <p>5 Mr. DeCarlo? What office did he work out 12:49:10</p> <p>6 of? 12:49:12</p> <p>7 A. He is out of Westport. 12:49:12</p> <p>8 Q. And where is he working now? 12:49:13</p> <p>9 A. Still out of the Westport office 12:49:15</p> <p>10 until that lease expires. 12:49:16</p> <p>11 Q. And then where is he going to go 12:49:18</p> <p>12 to? 12:49:21</p> <p>13 A. I don't know. 12:49:21</p> <p>14 Q. Where do you think he would go 12:49:22</p> <p>15 to? 12:49:23</p> <p>16 MS. SELTZER: I object to the 12:49:24</p> <p>17 form. 12:49:25</p> <p>18 Q. Which office do you think he 12:49:25</p> <p>19 would work out of? 12:49:26</p> <p>20 A. I don't know. We might rent him 12:49:28</p> <p>21 a suite out of there. We might have 12:49:30</p> <p>22 relocate to the Milford office. 12:49:32</p> <p>23 Q. So this -- to this date is the 12:49:34</p> <p>24 Westport office open? 12:49:36</p> <p>25 A. Yes. 12:49:37</p>
<p style="text-align: right;">167</p> <p>1 CUTRONE</p> <p>2 to retain her. 12:48:18</p> <p>3 Q. Did you hire anyone else to 12:48:19</p> <p>4 assume any of her job duties? 12:48:21</p> <p>5 A. No. 12:48:23</p> <p>6 Q. Could Ms. Dembin have performed 12:48:23</p> <p>7 her job duties out of the Milford, 12:48:27</p> <p>8 Connecticut office? 12:48:29</p> <p>9 A. No, because she would have been 12:48:30</p> <p>10 unsupervised. She would have been there 12:48:32</p> <p>11 by herself. 12:48:35</p> <p>12 Q. Where -- which office did 12:48:35</p> <p>13 Mr. Annarumma work out of? 12:48:37</p> <p>14 A. 80 Broad Street. 12:48:39</p> <p>15 Q. Didn't -- wasn't -- didn't Ms. 12:48:40</p> <p>16 Dembin report to Mr. Annarumma while she 12:48:42</p> <p>17 was in the Westport office? 12:48:45</p> <p>18 A. Partially, you know, on the 12:48:46</p> <p>19 insurance side, yes. 12:48:48</p> <p>20 Q. And then how about the bonding 12:48:49</p> <p>21 side? 12:48:51</p> <p>22 A. She reported to Burt. 12:48:51</p> <p>23 Q. Well, when -- after Mr. Fried 12:48:53</p> <p>24 was terminated, who did she report to on 12:48:55</p> <p>25 the bonding side? 12:48:58</p>	<p style="text-align: right;">169</p> <p>1 CUTRONE</p> <p>2 Q. So if Ms. Dembin -- could 12:49:38</p> <p>3 Ms. Dembin have continued to work out of 12:49:41</p> <p>4 the Westport office to this day? 12:49:44</p> <p>5 A. Physically if the office is 12:49:45</p> <p>6 there, yes. 12:49:46</p> <p>7 Q. And if -- 12:49:47</p> <p>8 MR. DATOO: Strike that. 12:49:51</p> <p>9 Q. Now, were there any lists that 12:49:52</p> <p>10 circulated that had names of employees to 12:49:59</p> <p>11 be laid off? 12:50:01</p> <p>12 A. I don't think so. 12:50:02</p> <p>13 Q. Were there -- was there a target 12:50:06</p> <p>14 number of people to be laid off? 12:50:17</p> <p>15 A. No. 12:50:19</p> <p>16 Q. Was every employee within LVI 12:50:20</p> <p>17 evaluated for layoff -- for inclusion in 12:50:26</p> <p>18 the layoff? 12:50:29</p> <p>19 A. In effect, yes. 12:50:30</p> <p>20 Q. What do you mean by in effect? 12:50:32</p> <p>21 A. Well, we constantly evaluate our 12:50:34</p> <p>22 people. So the group I am talking about 12:50:37</p> <p>23 is corporate. All right. So corporate 12:50:38</p> <p>24 being the Westport office, there is 80 12:50:41</p> <p>25 Broad Street, and there is Orange, Texas. 12:50:43</p>

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<p style="text-align: right;">170</p> <p>1 CUTRONE</p> <p>2 There is the Westport office, and there 12:50:45</p> <p>3 was a change in focus as to how we are 12:50:47</p> <p>4 going to approach business development, 12:50:49</p> <p>5 and there was a reassignment of 12:50:51</p> <p>6 responsibilities and a -- and a reduction 12:50:55</p> <p>7 in force. 12:50:57</p> <p>8 So we said okay. Let's go 12:50:57</p> <p>9 through whatever we need and not need we 12:50:59</p> <p>10 will let go. The woman that worked at 80 12:51:02</p> <p>11 Broad Street underneath Joseph that 12:51:05</p> <p>12 handled insurance claims, and we 12:51:07</p> <p>13 reassigned that responsibility to Gary 12:51:09</p> <p>14 Thibodeaux in Orange, Texas. We let go of 12:51:11</p> <p>15 Shari and reassigned her responsibilities 12:51:14</p> <p>16 to both Greg and Joseph because they were 12:51:15</p> <p>17 going to take back those 12:51:17</p> <p>18 responsibilities -- take those 12:51:18</p> <p>19 responsibilities. The marketing team in 12:51:19</p> <p>20 the Westport office was let go because 12:51:22</p> <p>21 that was being shifted underneath Canessa. 12:51:24</p> <p>22 So it was a very logical, unemotional 12:51:26</p> <p>23 approach towards reduction in force, and 12:51:30</p> <p>24 the fact that it happens to be Burt's 12:51:34</p> <p>25 daughter is irrelevant. 12:51:37</p>	<p style="text-align: right;">172</p> <p>1 CUTRONE</p> <p>2 location had less to do with it than the 12:52:28</p> <p>3 reassigning of responsibilities, but 12:52:31</p> <p>4 without Burt there there was no reason to 12:52:33</p> <p>5 have a Westport office. 12:52:34</p> <p>6 Q. Now, well, what about Mr. 12:52:36</p> <p>7 DiCarlo and his staff? 12:52:39</p> <p>8 A. Well, he can -- he can function 12:52:40</p> <p>9 from anywhere. We just -- we have a 12:52:44</p> <p>10 lease, so he is staying in the Westport 12:52:46</p> <p>11 office for the time being. 12:52:48</p> <p>12 Q. Now, you testified that you 12:52:50</p> <p>13 were -- were you constantly evaluating 12:52:51</p> <p>14 your staff? 12:52:53</p> <p>15 A. Uh-huh. 12:52:54</p> <p>16 Q. Why is that that Ms. Dembin was 12:52:54</p> <p>17 not terminated prior to the layoff? 12:52:57</p> <p>18 MS. SELTZER: I object to the 12:53:03</p> <p>19 form of the question. He never testified 12:53:04</p> <p>20 that he was her report. 12:53:05</p> <p>21 MR. DATOO: Sorry. 12:53:10</p> <p>22 MS. SELTZER: He didn't 12:53:11</p> <p>23 supervise Ms. Dembin, if that is what you 12:53:12</p> <p>24 are alluding to. You just asked him why 12:53:14</p> <p>25 he didn't terminate Ms. Dembin. 12:53:16</p>
<p style="text-align: right;">171</p> <p>1 CUTRONE</p> <p>2 Q. I am sorry? 12:51:38</p> <p>3 A. The fact that it happens to be 12:51:39</p> <p>4 Burt's daughter is irrelevant. 12:51:41</p> <p>5 Q. To you? 12:51:42</p> <p>6 A. Yeah. 12:51:42</p> <p>7 Q. Okay. Were there any employees 12:51:43</p> <p>8 that worked in the Westport office 12:51:46</p> <p>9 retained? 12:51:49</p> <p>10 A. Other than general counsel and 12:51:50</p> <p>11 his staff, no. 12:51:54</p> <p>12 Q. And who comprises the general 12:51:55</p> <p>13 counsel's staff? 12:52:00</p> <p>14 A. Greg DiCarlo, Tom Cullen, and 12:52:01</p> <p>15 Jeannie Naggy. 12:52:04</p> <p>16 Q. Are they both attorneys? 12:52:05</p> <p>17 A. Greg is an -- Tom is an 12:52:07</p> <p>18 attorney, and Genie is a paralegal. 12:52:09</p> <p>19 Q. So Ms. Dembin wasn't laid off 12:52:12</p> <p>20 because the Westport office closed, wasn't 12:52:18</p> <p>21 she? 12:52:20</p> <p>22 A. Well, it is part and parcel. It 12:52:20</p> <p>23 was, you know, we are going to close the 12:52:23</p> <p>24 Westport office, move it out -- reassign 12:52:24</p> <p>25 responsibilities. So the physical 12:52:27</p>	<p style="text-align: right;">173</p> <p>1 CUTRONE</p> <p>2 MR. DATOO: No, why wasn't she 12:53:18</p> <p>3 terminated. 12:53:19</p> <p>4 MS. SELTZER: If you know the 12:53:20</p> <p>5 answer. 12:53:21</p> <p>6 A. I don't know. 12:53:21</p> <p>7 Q. You don't know. So you just 12:53:22</p> <p>8 said you were evaluating -- 12:53:24</p> <p>9 A. As a company. 12:53:25</p> <p>10 Q. -- as a company. 12:53:26</p> <p>11 A. So managers are always assigned 12:53:27</p> <p>12 the responsibility of evaluating their 12:53:29</p> <p>13 talents, and when I mentioned earlier when 12:53:31</p> <p>14 the economic downturn hit in '08 and 12:53:34</p> <p>15 business came down in '09 and '10 we made 12:53:37</p> <p>16 reductions in force then of all personnel 12:53:40</p> <p>17 in all companies. It is what we have 12:53:43</p> <p>18 done in our history. When you grow you 12:53:45</p> <p>19 build talent, and when you are contracting 12:53:49</p> <p>20 you have to let go of talent, and 12:53:52</p> <p>21 sometimes it is good people. 12:53:56</p> <p>22 Q. Do you know why Ms. Dembin 12:53:57</p> <p>23 wasn't laid off in the prior layoff? 12:53:59</p> <p>24 A. No, I don't know. 12:54:00</p> <p>25 Q. Well, who -- 12:54:02</p>

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<p style="text-align: right;">174</p> <p>1 CUTRONE</p> <p>2 A. When you say the prior layoff 12:54:04</p> <p>3 meaning as part of the overall process the 12:54:06</p> <p>4 company goes through them, we lay people 12:54:08</p> <p>5 off all the time. 12:54:10</p> <p>6 Q. Were you involved in any 12:54:11</p> <p>7 decisions to lay off prior to the January 12:54:12</p> <p>8 lay off, January 2011 layoff? 12:54:15</p> <p>9 A. In previous corporate layoffs, 12:54:17</p> <p>10 sure, I was consulted. 12:54:19</p> <p>11 Q. And was everyone evaluated for 12:54:21</p> <p>12 layoff or continued employment? 12:54:25</p> <p>13 MS. SELTZER: I object to the 12:54:27</p> <p>14 form. You mean for each separate one? 12:54:29</p> <p>15 MR. DATOO: Yes. 12:54:33</p> <p>16 A. I -- I don't know if I 12:54:34</p> <p>17 understand your question. The -- the 12:54:36</p> <p>18 company always looks at -- we don't just 12:54:37</p> <p>19 decide one day okay today is Tuesday. We 12:54:43</p> <p>20 are going to do evaluation of personnel 12:54:45</p> <p>21 and decide whether we need layoffs or not. 12:54:47</p> <p>22 Every manager is tasked with the 12:54:49</p> <p>23 responsibility to evaluate his talent and 12:54:52</p> <p>24 retain them or not retain them. That is 12:54:54</p> <p>25 just SOP. So all I am saying is no 12:54:57</p>	<p style="text-align: right;">176</p> <p>1 CUTRONE</p> <p>2 A. Did the procedure change? 12:56:04</p> <p>3 Q. Well, you testified earlier that 12:56:09</p> <p>4 there was a group decision to determine 12:56:11</p> <p>5 who to lay off, correct? 12:56:14</p> <p>6 A. In this particular case, there 12:56:16</p> <p>7 were several managers brought in to the 12:56:20</p> <p>8 discussion, and I think that was smart of 12:56:24</p> <p>9 Scott because he is new. So he says let's 12:56:25</p> <p>10 talk about our people. Let's talk about 12:56:28</p> <p>11 talent, and he was soliciting 12:56:29</p> <p>12 input from -- from the management to see 12:56:33</p> <p>13 let's evaluate. Tell me about this one, 12:56:34</p> <p>14 that one in going through the -- the 12:56:36</p> <p>15 process. 12:56:38</p> <p>16 So there was very much of a 12:56:39</p> <p>17 group decision for good reason. Prior to 12:56:41</p> <p>18 that, you know, much of the management 12:56:45</p> <p>19 team was together for a long time. It 12:56:48</p> <p>20 probably took on the same process. You 12:56:49</p> <p>21 know, when we would talk about layoffs Bob 12:56:52</p> <p>22 and I would talk about okay let's do 12:56:55</p> <p>23 corporate. I mean I have had 12:56:57</p> <p>24 conversations with him back in -- okay. I 12:57:00</p> <p>25 am trying to think when that was. '6, '7 12:57:01</p>
<p style="text-align: right;">175</p> <p>1 CUTRONE</p> <p>2 different than historically if there is a 12:54:59</p> <p>3 need for retrenching of the business and 12:55:01</p> <p>4 reduction of force we go through that 12:55:02</p> <p>5 process. Sometimes it is closing an 12:55:04</p> <p>6 office. We closed Pittsburgh. We closed 12:55:06</p> <p>7 Seattle. We closed Orlando. You know, we 12:55:08</p> <p>8 will -- we will close offices and lay off 12:55:11</p> <p>9 the whole staff. 12:55:13</p> <p>10 Q. When was your last 12:55:14</p> <p>11 layoff -- other other -- prior to the 12:55:16</p> <p>12 January 2011 layoff, when was your last 12:55:18</p> <p>13 layoff? 12:55:21</p> <p>14 A. When a layoff -- where it was 12:55:21</p> <p>15 more kind of company wide reevaluation, I 12:55:23</p> <p>16 want to say we have done several since, 12:55:33</p> <p>17 you know, '05 because in '05 we had 12:55:39</p> <p>18 trouble with the banks. In '06, '7, '8, 12:55:44</p> <p>19 '9, there was plenty of times where we 12:55:47</p> <p>20 went through a process of this one goes, 12:55:48</p> <p>21 this one stays, if you will. 12:55:51</p> <p>22 Q. And did the decision making 12:55:53</p> <p>23 procedure in terms of who to lay off vary 12:55:55</p> <p>24 in any of these other layoffs as compared 12:55:58</p> <p>25 to the January 2011 layoff? 12:56:01</p>	<p style="text-align: right;">177</p> <p>1 CUTRONE</p> <p>2 when we first ran into trouble with the 12:57:03</p> <p>3 banks, we started talking about layoffs. 12:57:05</p> <p>4 So it would still be a group decision 12:57:07</p> <p>5 whether it is several managers or whether 12:57:10</p> <p>6 it is one or two managers, two managers, 12:57:12</p> <p>7 three managers. It just depends. It 12:57:14</p> <p>8 depends on the situation. 12:57:16</p> <p>9 Q. So what I am -- what I am trying 12:57:17</p> <p>10 to get at is you were involved in these 12:57:19</p> <p>11 prior layoff decisions, correct? 12:57:22</p> <p>12 A. On occasion, yes. 12:57:24</p> <p>13 Q. Okay. And on the occasions that 12:57:26</p> <p>14 you were involved with these layoff 12:57:28</p> <p>15 decisions, did Shari's name ever come up? 12:57:30</p> <p>16 A. Not that I recall. 12:57:34</p> <p>17 Q. Do you know why not? 12:57:38</p> <p>18 A. No. 12:57:40</p> <p>19 Q. Was Mr. Annarumma involved in 12:57:41</p> <p>20 these decisions? 12:57:44</p> <p>21 A. Probably not. 12:57:45</p> <p>22 Q. Why not? 12:57:47</p> <p>23 A. He managed a very small group of 12:57:50</p> <p>24 people, so the decisions usually are 12:57:55</p> <p>25 within -- when -- for the corporate office 12:58:01</p>

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<p style="text-align: right;">182</p> <p>1 CUTRONE</p> <p>2 operating level. The 12 people I referred 01:07:53</p> <p>3 to were at the corporate level, and that 01:07:55</p> <p>4 would include regional managers. So there 01:07:57</p> <p>5 was no prescribed number. It was an 01:08:02</p> <p>6 evaluation that was concluded on. 01:08:06</p> <p>7 Q. Was there a certain target 01:08:08</p> <p>8 savings that LVI was hoping to achieve? 01:08:10</p> <p>9 A. No. 01:08:13</p> <p>10 Q. Did Mr. State ever suggest that 01:08:14</p> <p>11 he wanted to save a million dollars by 01:08:19</p> <p>12 closing the Westport office? 01:08:21</p> <p>13 A. Not that I recall, no. 01:08:23</p> <p>14 Q. Okay. 01:08:26</p> <p>15 (Continued on next page.) 01:08:26</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">184</p> <p>1</p> <p>2 CERTIFICATION</p> <p>3</p> <p>4</p> <p>5</p> <p>6 I, DEBBIE ZAROMATIDIS, a Shorthand</p> <p>7 Reporter and a Notary Public, do hereby</p> <p>8 certify that the foregoing witness, PAUL</p> <p>9 CUTRONE, was duly sworn on the date</p> <p>10 indicated, and that the foregoing is a</p> <p>11 true and accurate transcription of my</p> <p>12 stenographic notes.</p> <p>13 I further certify that I am not</p> <p>14 employed by nor related to any party to</p> <p>15 this action.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 DEBBIE ZAROMATIDIS</p> <p>24</p> <p>25</p>
<p style="text-align: right;">183</p> <p>1 CUTRONE</p> <p>2 MR. DATOO: Thank you very 01:08:30</p> <p>3 much. 01:08:31</p> <p>4 THE VIDEOGRAPHER: We're going 01:08:32</p> <p>5 off the record, 1:08 p.m. End of today's 01:08:33</p> <p>6 questioning. 01:08:37</p> <p>7 (Time noted: 1:08 p.m.) 01:08:39</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 PAUL CUTRONE</p> <p>15</p> <p>16 Subscribed and sworn to before me</p> <p>17 this day of , 2011</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">185</p> <p>1</p> <p>2 EXHIBITS</p> <p>3</p> <p>4 PLAINTIFF'S</p> <p>5 EXHIBIT DESCRIPTION PAGE</p> <p>6 44 E-mail 84</p> <p>7 45 E-mail 95</p> <p>8 46 E-mail 99</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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